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Assigned for All Purposes

Judge Peter Wilson

CX-102

Attorneys for Plaintiff,

FRANCISCA AGUAYO, and all putative class members

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

FRANCISCA AGUAYO, an individual, on) Case No.: 30-2020-01175039-CU-OE-CJC
behalf of herself and all others similarly)
situated,)

Plaintiffs,

vs.

LORITZ & ASSOCIATES, INC., a)
California Corporation, and, L & A)
PLASTIC MOLDING, a business entity)
unknown, and DOES 1-50, inclusive,)

Defendants.

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Pay Wages, Including
Overtime Wages**
- 2. Failure to Pay Minimum Wage**
- 3. Failure to Provide and/or
Authorize Rest Breaks**
- 4. Failure to Provide and/or
Authorize Cool Down Recovery
Periods**
- 5. Failure to Provide Safe Working
Conditions**
- 6. Failure to Reimburse Required
Business Expenses**
- 7. Failure to Pay Earned Wages Upon
Discharge, Waiting Time Penalties**
- 8. Failure to Provide Timely,
Accurate, Itemized Wage
Statements**
- 9. Unlawful Business Practices
Bus & Prof. Code §17200**
- 10. Private Attorneys General Act
Penalties §2698 et seq**

JURY TRIAL DEMANDED

1 Plaintiff FRANCISCA AGUAYO, individually, and on behalf of herself and all
2 others similarly situated, all aggrieved employees, and as a Private Attorney General for
3 the State of California (collectively “Plaintiffs”), alleges as follows:

4 NATURE OF THE ACTION

5 1. This is an employment class and representative action on behalf of over 50
6 hourly, non-exempt employees against their employers for violations of numerous wage
7 and hour laws. Plaintiff employees bring this employment class action complaint on behalf
8 of themselves, all others similarly situated, all aggrieved employees, and as a Private
9 Attorney General for the State of California, against LORITZ & ASSOCIATES, INC., L
10 & A PLASTIC MOLDING, and the other Defendants DOES 1-50, inclusive, (hereafter
11 collectively “Defendants”).

12 2. Plaintiff alleges that Defendants failed to pay all wages, including overtime
13 wages, owed to employees, failed to provide rest and cool-down recovery breaks, failed to
14 pay minimum wage for all hours worked, failed to provide safe working conditions, failed
15 to reimburse for mileage and business expenses, failed to provide accurate payroll records,
16 and are liable for waiting time penalties, and engaged in unfair competition. Accordingly,
17 Plaintiff now brings this class and representative action to recover unpaid wages and related
18 relief on behalf of herself, all others similarly situated.

19 3. The class claims in this action are brought pursuant to Code of Civil Procedure
20 (“CCP”) §382, seeking recovery for unpaid wages, including overtime wages, missed meal
21 and rest period penalty pay, statutory and waiting time penalties, injunctive and other
22 equitable relief, interest, and reasonable attorneys’ fees and costs. Pursuant to the class and
23 representative action procedures provided for under California law, Plaintiff, on behalf of
24 themselves and proposed Class Members (also referred to as “Class”), also seeks injunctive
25 relief and restitution of all benefits Defendants have received from their unlawful actions
26 as alleged herein. Plaintiff has also provided notice of these claims pursuant to §2698 *et*
27 *seq.*, to the Labor and Workforce and Development Agency (“LWDA”) and now brings
28 this First Amended Complaint, including claims for civil penalties under the Private

1 Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.* Attorney General Act
2 (“PAGA”), Labor Code §2698 *et seq.*

3 4. The “Class Period” is designated as the time four years prior to the filing of the
4 Complaint in this matter through the trial date based upon the allegation that the violations
5 of California’s wage and hour laws and Unfair Competition Law, as described more fully
6 below, have been ongoing since at least four years prior to the date of this Complaint.

7 5. The “PAGA Period” is defined herein commences one year prior to the date of
8 filing the PAGA Notice letter with the LWDA.

9 6. During the Class Period, Defendants had an unlawful policy and/or practice of:
10 (1) failure to pay for work performed during required post-shift drive; (2) failing to pay
11 minimum wage for all hours worked; (3) failure to provide rest periods; (4) failure to
12 provide cool down recovery periods; (5) failure to provide safe working conditions due to
13 lack of any climate control; (6) failure to reimburse for business expenses; (7) failure to
14 timely pay all wages owed bimonthly and upon termination; (8) failing to provide accurate
15 payroll records; (9) engaging in unlawful business practices for unfair competition; and,
16 and (10) penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698
17 *et seq.* Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*

18 7. Defendants have treated all persons employed in California in such a way as to
19 violate California’s laws governing prompt payment of wages owed. Plaintiffs assert that
20 Defendants have knowingly and with conscious disregard of the law refused to pay the
21 Class Members and aggrieved employees all wages, including overtime wages, for work
22 performed and due. Class Members and aggrieved employees are owed their back pay,
23 plus interest and/or premiums and penalties under Business and Professions Code §17203
24 to compensate Class Members for the delay in receiving wages due.

25 6. Defendants, by and through their actions, have engaged in unfair competition,
26 requiring restitution to persons affected and disgorgement of profits so obtained.

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THE PARTIES

7. Plaintiff FRANCISCA AGUAYO is a resident of the State of California and lives in Yorba Linda, California. Plaintiff was employed as an hourly, nonexempt employee for Defendants. Plaintiff worked for Defendants for 21 years, until April 13, 2020, at or near minimum wage.

8. Defendant LORITZ & ASSOCIATES, INC. is Corporation doing business in California with the capacity to sue and to be sued, and doing business, in the county of Orange, State of California.

9. Defendant L & A PLASTIC MOLDING is a business entity of unknown form, and a division of Defendant LORITZ & ASSOCIATES, INC., with the capacity to sue and to be sued, and doing business, in the county of Orange, State of California.

10. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names, Plaintiff will amend this complaint when their true names and capabilities are ascertained.

11. Plaintiff is informed and believes and thereon alleges that each Defendants, directly or indirectly, or through agents or other persons, employed Plaintiff, aggrieved employees and other members of the class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

12. Venue is proper in this judicial district because Defendants conduct business in this county and Defendants have legal obligations to Plaintiff and many of the class members and aggrieved employees in this case that arose in this county.

1 13. The monetary damages, restitution and statutory penalties sought by Plaintiff
2 exceed the minimal jurisdictional limits of the Superior Court and will be established
3 according to proof at trial. Based on information, investigation and analysis, Plaintiff
4 alleges that the amount in controversy, including claims for monetary damages, penalties
5 and attorney's fees is more than twenty-five thousand dollars (\$25,000).

6 14. The California Superior Court has jurisdiction in this matter because Plaintiffs
7 are residents of California and Defendants are incorporated in and/or qualified to do
8 business in California and regularly conduct business in California. Further, there is no
9 federal question at issue as the claims herein are based solely on California law.

10 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

11 15. During the Class Period and PAGA Period, Defendants committed various
12 violations of the California Labor Code, the UCL and the applicable IWC Wage Order, as
13 alleged below in more detail. Defendants enforce multiple policies that violate state law
14 which are intended to increase its own profits to the detriment of its employees.

15 16. Plaintiff and the putative class and aggrieved employees are employees of
16 Defendants working in their warehouse and manufacturing facilities.

17 17. Plaintiffs were denied payment for all hour hours worked, including overtime
18 pay owed, resulting from Defendants' practices of sometimes requiring employees to
19 deliver containers and other products to Defendants' other locations after clocking out for
20 the day. This travel time was uncompensated, and employees were not paid for the cost of
21 mileage or gas.

22 18. Because Plaintiffs and employees are working at or near minimum wage,
23 Defendants' failure to pay for all hours worked, including for all overtime hours worked,
24 resulted in payment of less than the statutory minimum wage to employees.

25 19. Regarding rest breaks, Defendants failed to maintain a policy and practice that
26 provides its employees with off-duty rest periods as required by California law. Plaintiff
27 and her fellow employees were often not allowed to take any breaks, as required by Cal.
28 Lab. Code §226.7, §512 and Wage Order 1-2001. From time to time, Plaintiff did not
receive required breaks. Frequently, the only break they were permitted was an unpaid

1 meal period. If Plaintiff or her coworkers needed to use the bathroom during work hours,
2 Defendants often required them to clock out during that time. Defendants failed to pay
3 Plaintiffs and similarly situated employees the premium compensation (one hour of pay at
4 the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor
5 Code §226.7 (b) for these missed rest periods.

6 20. Defendants also failed to timely pay all wages owed upon termination, and
7 failed to furnish accurate wage statements to Plaintiffs, Class Members and aggrieved
8 employees. Finally, Defendants engaged in unfair competition.

9 21. Plaintiff brings this action on behalf of herself, and all other persons similarly
10 situated, to recover from Defendants unpaid overtime pursuant to the Industrial Wage
11 Order 1, alleging that Defendants frequently failed to pay all wages, including overtime
12 wages, owed to employees, failed to provide rest and cool-down recovery breaks, failed to
13 pay minimum wage for all hours worked, failed to provide safe working conditions, failed
14 to reimburse for mileage and business expenses, failed to provide accurate payroll records,
15 and are liable for waiting time penalties, and engaged in unfair competition under Business
16 and Professions Code § 17200.

17 22. This action has been brought and may properly be maintained as a class action
18 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
19 ascertainable and there is a well-defined community of interest. Plaintiffs are among in
20 excess of 50 employees with like job titles, duties, and hourly wages, who have been
21 similarly injured by Defendants' unlawful conduct.

22 23. The "Relevant Class Period" or proposed "Class Period" as defined herein
23 commences four years prior to the date of filing this Complaint.

24 24. The "PAGA Period" is defined herein commences one year prior to the date of
25 filing the PAGA Notice letter with the LWDA.

26 25. The PAGA Class, also referred to herein as "aggrieved employees": "All current
27 and former hourly, non-exempt employees of Defendants in California, at any time from
28 one year prior to the filing of the PAGA Notice letter with the LWDA until the resolution

1 of this matter.” Plaintiff reserves the right to amend or modify the definition of aggrieved
2 employees with respect to the issues or in any other way.

3 26. Plaintiff brings this action on their behalf and as a class action under Cal. Code
4 of Civil Procedure §382 on behalf of the following defined groups:

5 Proposed Class:

6 “All persons who are employed or have been employed by Defendants in the
7 State of California as hourly, non-exempt workers during the period of the
8 relevant statute of limitations.”

9 The proposed Subclasses are defined as follows:

- 10 a. All persons who are employed or have been employed by Defendants in
11 the State of California as hourly, non-exempt workers during the period
12 of the relevant statute of limitations, who worked one or more shifts in
13 excess of five (5) hours.
- 14 b. All persons who are employed or have been employed by Defendants in
15 the State of California as hourly, non-exempt workers during the period
16 of the relevant statute of limitations, who worked one or more shifts in
17 excess of six (6) hours.
- 18 c. All persons who are employed or have been employed by Defendants in
19 the State of California as hourly, non-exempt workers during the period
20 of the relevant statute of limitations, who worked one or more shifts in
21 excess of eight (8) hours.
- 22 d. All persons who are employed or have been employed by Defendants in
23 the State of California as hourly, non-exempt workers during the period
24 of the relevant statute of limitations, who worked one or more shifts in
25 excess of ten (10) hours.
- 26 e. All persons who are employed or have been employed by Defendants in
27 the State of California as hourly, non-exempt workers during the period
28

1 of the relevant statute of limitations, who worked one or more shifts in
2 excess of twelve (12) hours.

- 3 f. All persons who are employed or have been employed by Defendants in
4 the State of California as hourly, non-exempt workers during the period
5 of the relevant statute of limitations, who worked one or more shifts in
6 excess of three and one-half hours (3 ½), but less than or equal to six (6)
7 hours.
- 8 g. All persons who are employed or have been employed by Defendants in
9 the State of California as hourly, non-exempt workers during the period
10 of the relevant statute of limitations, who worked one or more shifts in
11 excess of six (6) hours, but less than or equal to ten (10) hours.
- 12 h. All persons who are employed or have been employed by Defendants in
13 the State of California as hourly, non-exempt workers during the period
14 of the relevant statute of limitations, who traveled for work related
15 purposes.
- 16 i. All persons who are employed or have been employed by Defendants in
17 the State of California as hourly, non-exempt workers during the period
18 of the relevant statute of limitations, who separated their employment
19 from Defendants.
- 20 j. All persons who are employed or have been employed by Defendants in
21 the State of California as hourly, non-exempt workers during the period
22 of the relevant statute of limitations, who received pay for one or more
23 pay periods.

24 27. This action is brought, and may properly be maintained, as a class action under
25 CCP §382 and/or a representative action under Business & Professions Code §§17200 et
26 seq. and Labor Code §2699 because there is a well-defined community of interest in the
27 litigation, and the proposed Class and Subclasses (collectively “Class”) are easily
28 ascertainable.

- 1 a. Numerosity: Plaintiffs allege on information and belief that the Class
2 Members exceed 50 and therefore are so numerous as to make it
3 impracticable to bring them all before this Court.
- 4 b. Means of Identifying the Class: Plaintiffs allege on information and belief
5 that the Class Members can be readily be identified through a review of
6 Defendants' payroll records and the records of the company that handles
7 payroll for Defendants.
- 8 c. Common Questions Predominate the Class: The rights which are the subject
9 of this action are common to all of the Class Members. There are questions
10 of law and fact presented herein which are common to the Class Members
11 represented by Plaintiff and predominate over any questions that affect only
12 individual members of the class. The common questions of law and fact
13 include, but are not limited to, the following:
- 14 i. Whether Defendants violated wage and hour laws by establishing a
15 corporate policy and practice of requiring unpaid tasks performed
16 during post-shift drive time;
 - 17 ii. Whether Defendants violated wage and hour laws by failing to
18 provide safe working conditions;
 - 19 iii. Whether Defendants violated wage and hour laws by failing to
20 provide suitable climate control in its facilities;
 - 21 iv. Whether Defendants violated wage and hour laws by failing to
22 reimburse for mileage and business expenses;
 - 23 v. Whether Defendants violated wage and hour laws in failing to make
24 rest periods available;
 - 25 vi. Whether Defendants violated wage and hour laws by failing to
26 provide cool-down recovery periods;
 - 27 vii. Whether Defendants failure to pay the Class Members all wages
28 owed, including overtime and vacation wages, violated Business &
Professions Code § 17200;

- viii. Whether Defendants failure to provide the Class Members rest and cool down recovery periods violated Business & Professions Code § 17200;
- ix. Whether Defendants failed to provide accurate wage statements to Plaintiffs and the Class as a consequence of the above listed wrongful acts;
- x. Whether Defendants failed to provide Class Members with correct final wage statements;
- xi. Whether Defendants failed to pay wages, including overtime and final wages, to terminated or quitting employees in the Class on a timely basis;
- xii. What is the appropriateness and nature of relief to each Plaintiff Class and Subclass member;
- xiii. Whether Defendants' actions violated Business & Professions Code § 17200;
- xiv. Whether the Class Members are entitled to various penalties from Defendants including, but not limited to, waiting-time penalties under Labor Code §§ 201, 202, 203, 204, 226 and 558;
- xv. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xvi. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass member?
- d. Typicality: As alleged above, Plaintiff's claims are typical of the claims of all the Class Members and other members of the Class were subject to the same policies and practices.
- e. Adequacy: Plaintiff is an adequate representative of the class in that her claims are typical of the Class Members and he has no interest antagonistic to or in conflict with the interests of the Class Members. Plaintiff is qualified to, and will, fairly and adequately protect the interests of the Class Members.

1 Plaintiff is represented by attorneys who have substantial class action
2 experience in wage-and-hour and class action law.

- 3 f. Superiority: Class action adjudication is superior to other available methods
4 because class action will achieve economies of time, effort, and expense as
5 compared to separate lawsuits, and avoid inconsistent outcomes, because the
6 same issues can be adjudicated in the same manner for the entire class.
7 Furthermore, as the damages suffered by each individual member of the class
8 may be relatively small, the expenses and burden of individual litigation
9 would make it difficult or impossible for individual members of the class to
10 redress the wrongs done to them, while an important public interest will be
11 served by addressing the matter as a class action. Plaintiffs are currently
12 unaware of any pending litigation commenced by any of the Class Members
13 involving the same issues in this complaint. Further, it is desirable to
14 concentrate the litigation of such claims in this forum, and there are no
15 difficulties likely to be encountered in the management of the class action.

16 28. Manageability: Plaintiff is informed and believes that all allegations in this
17 Complaint are capable of being determined on the same evidence and based primarily on
18 review of corporate records and key testimony of Defendants' corporate representatives.
19 To the extent statistical analysis and representative evidence is necessary, Plaintiff and
20 proposed class counsel will employ competent experts and consultants in the field to
21 determine and review evidence for both issues of liability and damages in a scientifically
22 reliable manner.

23 29. Plaintiffs request, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California
24 Rules of Court, that the absent Class Members be notified by the best notice practicable
25 under the circumstances, including individual notice to all members who can be identified
26 through reasonable effort.

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FIRST CAUSE OF ACTION
FAILURE TO PAY EARNED WAGES, INCLUDING OVERTIME
Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199
(All Plaintiffs Against All Defendants)

30. Plaintiffs reassert and re-allege paragraphs 1 through 33, inclusive, as if fully set forth and incorporate said paragraphs herein by reference.

31. Defendants' conduct described in this complaint violates the provisions of Labor Code §§ 218, 510 and IWC Wage Order 1.

32. During the Class Period, Labor Code Section 510 applied to Defendants' employment of Plaintiff, aggrieved employees and the Class. At all times relevant hereto, Labor Code Section 510 and the applicable IWC order provided that it was unlawful to employ persons such as members of the Class without compensating them at a rate of pay either one and one-half (1½) or two (2) times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis. Specifically, Wage Order 1 provided that Defendants were required to pay Plaintiff, aggrieved employees and the rest of the Class at the rate of one and one-half (1½) times the Class member's regular rate of pay if the Class member worked more than eight (8) hours in a day or more than forty (40) hours in a work week. Furthermore, Defendants were required to pay Plaintiff, aggrieved employees and the rest of the Class at the rate of two (2) times the Class member's regular rate of pay if the Class member worked more than twelve (12) hours a day.

33. Plaintiff is informed and believes and, based thereon, alleges that, during the Class period, Defendants failed to pay Plaintiff, aggrieved employees and the Class all of the wages, including overtime wages, that they were due and therefore violated Labor Code Section 510 and the applicable IWC Wage Order.

34. Therefore, the Class Members are entitled to recover from Defendants unpaid wages, plus interest thereon.

35. Employees are employed at or near minimum wage, thus failure to pay all hours worked, including overtime hours worked, results in a payment of wages lower than the

1 statutory minimum wages in violation of Labor Code §1197, and the Class is entitled to
2 penalties under Labor Code §1197.1.

3 36. Plaintiffs allege on information and belief that Defendants' failure to pay the
4 Class Members all wages including overtime, as alleged in this cause of action, was willful,
5 and thus entitles the Class Members to penalties under Labor Code § 203. Specifically,
6 Labor Code § 203 provides that an employee's wages shall continue as a penalty until paid
7 or for a period of up to 30 days from the time they were due, whichever period is shorter.

8 37. In addition, and pursuant to Labor Code § 558, Plaintiffs request that this Court
9 award civil penalties as set forth in § 558 for each pay period during which Defendants
10 failed to pay the Class Members their wages, as alleged above.

11 38. Plaintiffs further request an award of attorneys' fees pursuant to Labor Code §§
12 218.5 and 1194 and Code of Civil Procedure § 1021.5.

13
14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PAY MINIMUM WAGE**
16 **Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199**
17 **(All Plaintiffs Against all Defendants)**

18 39. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

19 40. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an
20 employer to suffer or permit a California employee to work without paying wages at the
21 proper minimum wage for all time worked as required by the applicable IWC Wage Order.

22 41. Section 2(K) of Wage Order 4 defines “hours worked” as “the time during which
23 an employee is subject to the control of an employer, and including all the time the
24 employee is suffered or permitted to work, whether or not required to do so.”

25 42. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked
26 as a result of Defendants’ practices described above. During this time spent driving to
27 deliver items for their employer off the clock, employees were paid zero wages.

28 43. Additionally, when employees like Plaintiff and her coworkers earning near
minimum wage do not receive payment for all hours worked, including as a result of

1 Defendants' practice of requiring them to deliver products to other locations while off the
2 clock, the result is that Plaintiff, aggrieved employees and class members are earning less
3 than the statutory minimum wages for all hours worked

4 44. Labor Code §1197 states that payment of a lower wage than the minimum wage
5 so fixed is unlawful. When minimum wage employees are not paid for all hours worked,
6 the result is that their wages, averaged over the total hours worked, amount to a rate lower
7 than the legal minimum wage.

8 45. For all time worked but not compensated, Plaintiff, aggrieved employees and
9 Class Members are entitled to not less than the California minimum wage, and pursuant to
10 Labor Code section 1194.2, subdivision (a), liquidated damages in an amount equal to the
11 unpaid minimum wage and interest thereon.

12 46. Pursuant to Labor Code section 1194, Plaintiff, aggrieved employees and the
13 Class are also entitled to attorneys' fees, costs and interest according to proof.

14 47. In violation of California law, Defendants have knowingly and willfully refused
15 to perform their obligations to compensate Plaintiff for all minimum wages earned and for
16 all hours worked. As a direct result, Plaintiff has suffered, and continue to suffer,
17 substantial losses related to the use and enjoyment of such wages, lost interest on such
18 wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform
19 their obligations under state law, all to their respective damage in amounts according to
20 proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.
21 Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
22 and deliberate intention of injuring the rights of Plaintiff, aggrieved employees and the
23 Class. Plaintiff, aggrieved employees and Class members are thus entitled to recover
24 nominal, actual, compensatory, punitive and exemplary damages in the amounts according
25 to proof at time of trial.

26 48. Defendants' conduct as described herein violates Labor Code sections 200,
27 218.5, 226, 558, 1194, and 1197. Therefore, pursuant to Labor Code sections 200, 218.5,
28 226, 558, 1194 and 1197.2, Plaintiff, aggrieved employees and the Class members are

entitled to recover the unpaid balance of wages owed by Defendants, plus interest, penalties, attorneys' fees, expenses and cost of suit.

**THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS
Cal. Labor Code §§226, 226.7, 512, 558, 1198
(All Plaintiffs Against All Defendants)**

49. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

50. California Labor Code § 226.7 provides that it is unlawful to require any employee to work during rest period mandated by an applicable order of the IWC.

51. Plaintiffs allege on information and belief that during the Class Period, as alleged above, class members frequently worked through their rest periods and were not provided required breaks. From time to time, if Plaintiff or a Class Member needed to use the bathroom during work hours, the employee was required to clock out during that time.

52. In this case, unpaid breaks were often not provided, and Plaintiff, aggrieved employees and Class Members took unpaid bathroom breaks under conditions that violate California's rest break requirements. When provided, rest breaks were provided in a facility that was unreasonably hot the summer and cold in the winter. The failure to provide adequate climate control resulted in breaks that, when taken, were not compliant with applicable laws mandating climate control in work areas, as set forth more fully below.

53. Defendants failed to pay the Class Members penalty wages for missed rest periods and withheld cool down recovery periods. As a result of the aforementioned conduct, the Class Members have been damaged according to proof at trial.

54. Defendants' failure to pay these wages entitles the Class Members to additional wages, pursuant to § 226.7, which provides that if an employer fails to provide an employee a rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

55. Plaintiffs allege on information and belief that Defendants' failure to pay the Class Members the unpaid balance of these rest period wages upon the termination of their

1 employment, as alleged in this cause of action, was willful, and thus entitles the Class
2 Members to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides
3 that an employee's wages shall continue as a penalty until paid or for a period of up to 30
4 days from the time they were due, whichever period is shorter.

5 56. Plaintiff will seek restitution pursuant to Labor Code §558(a)(3) for herself and
6 the proposed Class Members for each violation of Labor Code §226.7. Further, as a
7 derivative claim of failing to pay the premium pay of one (1) hour of pay at the employee's
8 regular rate of compensation for each workday that the meal period is not provided,
9 Plaintiff will seek statutory penalties under Labor Code §226(a)(1) because the failure to
10 pay such premium wages rendered the gross pay calculations inaccurate in violation of
11 Labor Code §226(e)(2)(B)(i). Plaintiff further seeks prejudgment interest, reasonable costs
12 of suit and reasonable attorney's fees as provided by the Labor Code and Code of Civil
13 Procedure §1021.5, or other applicable law.

14
15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE PROPER COOL-DOWN REST PERIODS**
17 **Cal. Labor Code §§ 226.7, 1198, CCR, Title 8, §3395)**
18 **(All Plaintiffs Against All Defendants)**

19 57. Plaintiff incorporates all preceding paragraphs as if set forth in full herein.

20 58. Wage Order 1 ¶15 requires: (A) The temperature maintained in each work area
21 shall provide reasonable comfort consistent with industry-wide standards for the nature of
22 the process and the work performed; and (B) If excessive heat or humidity is created by
23 the work process, the employer shall take all feasible means to reduce such excessive heat
24 or humidity to a degree providing reasonable comfort.

25 59. Labor Code 1198 makes it unlawful to employ employee in conditions
26 prohibited by the wage order.

27 60. Labor Code section 226.7, subdivision (c) further provides that:

28 If an employer fails to provide an employee a... recovery period
in accordance with a state ., law, including, but not limited to an
applicable statute or applicable regulation, standard, or order of
the Occupational Safety and Health Standards Board, or the

1 Division of Occupational Safety and Health, the employer shall
2 pay the employee one additional hour of pay at the employee's
3 regular rate of compensation for each workday that the meal or
4 rest or recovery period is not provided.

5 61. Upon information and belief, and at all relevant times herein, Defendants
6 required their employees, including Plaintiff, aggrieved employees and Class Members to
7 consistently work in temperatures far exceeding eighty (80) degrees Fahrenheit and neither
8 allowed nor encouraged Plaintiff, aggrieved employees and the Class Members to take
9 cool-down rest periods when such employees were feeling overheated, exposing both
10 Plaintiff, aggrieved employees and members of the Class to a high risk of suffering heat
11 illness so that their life, safety, and health were jeopardized by Defendants' conduct.

12 62. Defendants' warehouse and facilities did not have proper climate control. Title
13 8 of the California Code of Regulations cover standards for indoor heat exposure. Section
14 3203 requires that employers take the steps necessary to protect employees' health and
15 safety when the temperature exceeds 85 degrees in the workplace.

16 63. Plaintiff, aggrieved employees and Class members have suffered and continue
17 to suffer losses related to the use and enjoyment of compensation due and owing to them
18 as a direct result of Defendants' Labor Code violations, including the failure to pay an
19 additional hour of pay for each day compliant cool-down recovery periods were not
20 provided or allowed.

21 64. Defendants' conduct as alleged herein violates California Code of Regulation,
22 Title 8, section 3395 and Labor Code sections 226.7 and 1198. Plaintiff, aggrieved
23 employees and the Class are therefore entitled to compensation and penalties as provided
24 by law. Plaintiff seeks all available remedies for Defendants' violations including, but not
25 limited to any and all wages due, penalties, monies, interest, attorneys' fees, and costs to
26 the extent permitted by law.

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FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE SAFE WORKING CONDITIONS
California Labor Code sections 1198, 8 C.C.R. 3203, Wage Order 1
(Against Defendants for Safe Working Conditions Violations)

65. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

66. Wage Order 1 ¶15 requires: (A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and, (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

67. Upon information and belief, and at all relevant times herein, Defendants required their employees, including Plaintiff, aggrieved employees and Class Members to consistently work in temperatures far exceeding eighty (80) degrees Fahrenheit exposing both Plaintiff, aggrieved employees and members of the Class to a high risk of suffering heat illness so that their life, safety, and health were jeopardized by Defendants' conduct.

68. Defendant's facility did not have any climate control and would get unsafely hot in the summer and freezing cold in the winter. Plaintiff, aggrieved employees and Class Members worked in unbearable heat and cold in the facility.

69. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order.

70. Title 8 of the California Code of Regulations cover standards for indoor heat exposure. Section 3203 requires that employers take the steps necessary to protect employees' health and safety when the temperature exceeds 85 degrees in the workplace.

71. Defendants' conduct as alleged herein violates California Code of Regulation, Title 8, section 3203 and Labor Code sections 226.7 and 1198. Plaintiff, aggrieved employees and the Class are therefore entitled to compensation and penalties as provided by law. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to any and all wages due, penalties, monies, interest, attorneys' fees, and costs to the extent permitted by law.

SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES
California Labor Code sections 203, 558, 218.5, 2802; CCP1021.5
(All Plaintiffs Against All Defendants)

72. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

73. Defendants were required to reimburse Plaintiff, aggrieved employees and Class Members for business expenses related to car mileage.

74. The California Supreme Court expressly endorsed the extension of §2802 to car mileage expenses in *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 561. Here, Plaintiff, aggrieved employees and Class Members were required to deliver products to Defendants' other facilities while off the clock in their own vehicles. However, no reimbursement for mileage or gas was ever paid to employees. Plaintiff's paystubs do not have any entries for reimbursement of any expenses.

75. As a result of Defendants' conduct, Plaintiff, aggrieved employees and the Class will seek reimbursement for required expenses, as well as reasonable attorneys' fees, and costs of suit pursuant to Labor Code § 218.5 and CCP 1021.5.

76. Plaintiffs allege on information and belief that Defendants' failure to pay the Class Members for this expense, which decreased their effective rate of pay resulting in unpaid and/or underpaid wages owed, was willful, and thus entitles the Class Members to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides that an employee's wages shall continue as a penalty until paid or for a period of up to 30 days from the time they were due, whichever period is shorter.

77. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court award civil penalties as set forth in § 558 for each pay period during which Defendants failed to pay the Class Members as alleged above.

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**SEVENTH CAUSE OF ACTION
LATE PAY AND WAITING TIME PENALTIES
Cal. Lab. Code §§201, 202, 203, 204, and 1199
(All Plaintiffs Against All Defendants)**

78. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

79. During the Class period, Labor Code Sections 201 and 202 applied to Defendants' employment of Plaintiff, aggrieved employees and the Class. At all times relevant hereto, Labor Code Section 201 provided that, if an employer such as Defendants discharged an employee such as a member of the Class, the wages earned and unpaid at the time of discharge were due and payable immediately. Furthermore, Labor Code Sections 202 provided that, if an employee such as a member of the Class voluntarily left his or her employment, the wages earned and unpaid must be paid by the employer within seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to leave, in which case the employee is entitled to receive his or her wages immediately at the time of quitting.

80. Plaintiff is informed and believes and, based thereon, alleges that, during the Class period, Defendants willfully failed to pay former employees in the Class their earned and unpaid wages, either at the time of their discharge or within seventy-two (72) hours of their quitting. Furthermore, Defendants failed to pay Plaintiffs, on a timely basis, all of the wages due them at the time of termination or quitting, including overtime wages. Defendants therefore violated Labor Code Section 201 and 202.

81. As alleged above, by failing to pay for all hours worked by Plaintiffs and the Class, Defendants underpaid the actual amount of regular hours worked by Plaintiffs and the rest of the Class. These unpaid amounts were still owing to former employees in the Class when they ended their employment with Defendants. Consequently, Defendants failed to timely pay all wages due former employees in the Class at the time that their employment ended.

82. During the Class Period, Labor Code Section 203 provided that, if employers such as Defendants willfully fail to pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof

1 at the same rate until paid or until an action therefore is commenced, but the wages shall
2 not continue for more than thirty (30) days. Accordingly, Class Members who were
3 discharged or who quit during the Class Period are entitled to receive their wages for each
4 day they were not paid, at their regular rate of pay, up to a maximum of thirty (30) days.

5 83. Defendants were required to pay Plaintiff, aggrieved employees and the Class
6 Members all wages earned twice during each calendar month pursuant to Labor Code
7 §204(a). Defendants failed to pay all wages earned to employees as a result of the unlawful
8 employment policies and practices discussed herein. As a result of these practices,
9 employees were underpaid for hours worked, including penalty wages, and this
10 underpayment resulted in a failure to pay all wages owed twice per month.

11 84. Plaintiff will seek both restitution pursuant to Labor Code §558(a)(3) for herself
12 and Class Members for each violation of Labor Code §203 during the Class Period, in an
13 amount according to proof based on Defendants' corporate and payroll records.

14 **EIGHTH CAUSE OF ACTION**
15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
16 **AND MAINTAIN ACCURATE RECORDS**
17 **Cal. Labor Code §§ 226, 1174, and 1199**
18 **(All Plaintiffs Against All Defendants)**

19 85. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

20 86. California Labor Code § 226(a) provides that “[e]very employer shall,
21 semimonthly or at the time of each payment of wages, furnish each of his or her
22 employees...an accurate itemized statement in writing showing (1) gross wages earned, (2)
23 total hours worked..., (3) the number of piece-rate units earned and any applicable piece
24 rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned,
25 (6) the inclusive dates of period for which the employee is paid, (7) the name of the
26 employee and his or her social security number..., (8) the name and address of the legal
27 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
28 and the corresponding number of hours worked at each hourly rate by the employee.”

87. Labor Code § 226(a) further provides that “[t]he deductions made from
payments of wages shall be recorded in ink or other indelible form, properly dated, showing

1 the month, day, and year, and a copy of the statement or a record of the deductions shall be
2 kept on file by the employer for at least three years at the place of employment or at a
3 central location within the State of California.”

4 88. Labor Code § 226(e) provides that “[a]n employee suffering injury as a result of
5 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled
6 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
7 in which a violation occurs and one hundred dollars (\$100) per employee for each violation
8 in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
9 (\$4000), and is entitled to an award of costs and reasonable attorney's fees.”

10 89. Labor Code § 1174 provides that “[e]very employer employing labor in this state
11 shall ... (c) [k]eep a record showing the names and addresses of all employees employed
12 and the ages of all minors [and] (d) [k]eep at a central location in the state or at the plants
13 or establishments at which employees are employed, payroll records showing the hours
14 worked daily by and the wages paid to, and the number of piece-rate units earned by and
15 any applicable piece rate paid to, employees employed at the respective plants or
16 establishments. These records shall be kept in accordance with rules established for this
17 purpose by the commission, but in any case shall be kept on file for not less than two years.”

18 90. Labor Code § 1174.5 provides that “[a]ny person employing labor who wilfully
19 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
20 complete records maintained by subdivision (d) of Section 1174, or to allow any member
21 of the commission or employees of the division to inspect records pursuant to subdivision
22 (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

23 91. Plaintiffs allege on information and belief that Defendants knowingly and
24 intentionally failed to furnish Plaintiff, aggrieved employees and Class Members with
25 accurate itemized statements from time to time for each pay period that they worked, and
26 frequently failed to maintain accurate payroll records of the Class Members as mandated
27 by Labor Code §§ 226 and 1174. Inaccuracies in the wage statements and payroll records
28 were caused, among other reasons, by Defendants’ unlawful timekeeping practices that
resulted in underreporting hours worked and overtime hours worked. Plaintiffs allege on

1 information and belief that as a result of Defendants' conduct, the Class Members sustained
2 damages. As such, the Class Members are entitled to civil penalties and an award of costs
3 and attorney's fees under § 226(e). In addition, the Class Members are entitled to recover
4 civil penalties under § 1174.5.

5
6 **NINTH CAUSE OF ACTION**
7 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**
8 **California Business and Professions Code section 17200, et seq.**
9 **(All Plaintiffs Against All Defendants)**

9 92. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

10 93. The unlawful timekeeping practices resulting in unpaid wages, unpaid overtime,
11 failure to provide required rest and cool down recovery breaks, failure to provide safe
12 working conditions and pay required business expenses, and failure to pay wages as
13 required twice per month and timely upon termination, constitute unlawful and unfair
14 business acts and/or practices within the meaning of Business and Professions Code
15 §17200 *et seq.*, including but not limited to violations of the applicable State of California
16 Industrial Welfare Commission Wage Orders, regulations and statutes, or are practices
17 which are otherwise unfair, deceptive and unlawful.

18 94. Indeed, Defendants' failure to pay the wages to Plaintiff, aggrieved employees
19 and other aggrieved employees as alleged above constitutes an unlawful, unfair or
20 fraudulent business act or practice, in violation of Business & Professions Code § 17200
21 *et seq.*

22 95. Pursuant to Business & Professions Code § 17203, the members of the UCL
23 Subclass are entitled to restitution of premium wages and other pay owed, including
24 penalty pay, where such wages were due during the Class Period, according to proof.

25 96. In addition, unless the Court imposes an injunction against Defendants requiring
26 Defendants to pay full wages in the future, Plaintiff, aggrieved employees and Class
27 Members will suffer immediate and irreparable harm and will have no adequate remedy at
28 law. Accordingly, the Class Members request that this Court enter a preliminary and

1 permanent injunction requiring Defendants to cease and desist from their unlawful business
2 practices and pay compensation as required by California law.

3 97. This cause of action is brought as a cumulative remedy as provided in Business
4 and Professions Code §17205, and is intended as an alternative remedy for restitution for
5 Plaintiff, aggrieved employees and members of the relevant subclasses for any portion of
6 time commencing within three (3) years before filing this complaint, and as the primary
7 remedy for Plaintiff, and the relevant subclasses, for any portion of time during the *fourth*
8 *year* before filing this Complaint, as this period of time exceeds the general statute of
9 limitations on statutory wage claims.

10 98. Plaintiff, on behalf of herself and the proposed Class requests the violations of
11 each defendant be enjoined, and other equitable relief provided, as this court deems proper,
12 including an order requiring Defendants to make tax contributions on the accrued wages in
13 the form of FICA, Social Security, Medicare, Unemployment Insurance or other applicable
14 payments. Defendants' conduct, business acts and practices undermined competition and
15 was done in order to avoid costs other lawful employers comply with in order to avoid
16 payment of full compensation, ages and statutory penalties owed.

17 99. Plaintiff, aggrieved employees and the Class Members request relief, as
18 described below, including restitution owed, in an amount according to proof, and for
19 reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code and
20 the Code of Civil Procedure § 1021.5, or other applicable law.

21 **TENTH CAUSE OF ACTION**

22 **STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS** 23 **GENERAL ACT, LABOR CODE §2698 *et seq.* AGAINST ALL DEFENDANTS**

24 100. Plaintiff incorporates by reference in this cause of action each allegation of the
25 preceding paragraphs as though fully set forth herein.

26 101. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5,
27 an aggrieved employee, on behalf of herself and other current or former employees, may
28 recover penalties under any provision of the Labor Code that provides for civil penalties.

1 These penalties are in addition to any other relief available under the Labor Code. Plaintiff
2 is an aggrieved employee under PAGA.

3 102. As set forth above, Defendants have committed numerous violations for which
4 the Labor Code provides for penalties, including violations of all applicable Labor Code
5 provisions set forth in the foregoing causes of action. Labor Code §2699.5 identifies the
6 aforementioned Labor Code provisions as statutes to which §2699.3's procedural
7 requirements must be met before a penalty may be assessed under §2699(f). Plaintiff has
8 complied with the procedural requirements specified in §2699.3 by providing written
9 notice to the Defendants and the Labor & Workforce Development Agency ("LWDA").
10 See Exhibit 1 attached hereto, which is a true and correct copy of the Notice
11 correspondence showing compliance with §2699.3. No notice of intent to investigate the
12 alleged violations was provided within the statutory period. Consequently, Plaintiff has
13 exhausted administrative remedies, and on behalf of themselves and all other aggrieved
14 current and former employees of Defendants. Plaintiff, therefore, now pursues this cause
15 of action as permitted by §2698, *et seq.*

16 103. Enforcement of statutory provisions enacted to protect workers and to ensure
17 proper and prompt payment of wages due to employees is a fundamental public interest in
18 California. Consequently, Plaintiff's success in this action will result in the enforcement of
19 important rights affecting the public interest and will confer a significant benefit upon the
20 general public. Private enforcement of the rights enumerated herein is necessary, as no
21 public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing
22 this action and it would be against the interests of justice to require payment of attorneys'
23 fees and costs from any recover that might be obtained herein, pursuant to, *inter alia*, Labor
24 Code §§2698, *et seq.*, and Code of Civil Procedure §1021.5

25 104. In addition, if Plaintiff succeeds in enforcing these rights affecting the public
26 interest, then attorneys' fees may be awarded to Plaintiff and against Defendants under
27 Code of Civil Procedure §1021.5 and other applicable law in part, because:
28

a. A successful outcome in this action will result in the enforcement of important rights affecting the public interest by requiring Defendants to comply with the wage and hour laws and California's unfair business practice law;

b. This action will result in a significant benefit to Plaintiff, the Class, and the general public by bringing to a halt unlawful and/or unfair activity;

c. Unless this action is prosecuted, members of the Class and general public will not recover those moneys, and many of Defendants' employees would not be aware that the acts and practices they were subjected to by Defendants were wrongful;

d. Unless this action is prosecuted, Defendants will continue to mislead their employees about the true nature of their rights and remedies under the wage and hour laws; and

105. An award of attorneys' fees and costs is necessary for the prosecution of this action and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in general, by preventing Defendants from continuing to circumvent the wage and hour statutes and frustrate the long-standing recognition by the California legislature and the courts that such statutes, as pled herein, are not merely a matter of private concern between employer and employee to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private agreements. Rather, the wage and hour statutes have been described as a matter of public concern, were designed to provide minimum substantive guarantees to individual workers and are essential to public welfare.

REQUEST FOR RELIEF

That Plaintiff, Class Members, and aggrieved employees receive an award in the amount of unpaid wages owed, including interest thereon, and penalties as follows:

For Causes of Action 1-9

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
2. Provision of class notice to all members of the Class;

1 3. That Defendant is found to have violated the above-referenced provisions of the
2 Labor Code, CCR and IWC Wage Order 5-2001 as to Plaintiff, Class Members and
3 aggrieved employees;

4 For the First Cause of Action- Failure to Pay Wages:

- 5 1. For compensatory damages according to proof at trial;
- 6 2. For prejudgment interest, at the legal rate;
- 7 3. For penalties pursuant to Labor Code §§ 203, 510, 558;
- 8 4. For attorneys' fees;
- 9 5. For costs of suit incurred herein; and
- 10 6. For such other and further relief as the Court may deem appropriate.

11 For the Second Cause of Action- Failure to Pay Minimum Wage:

- 12 1. For compensatory damages according to proof at trial;
- 13 2. For prejudgment interest, at the legal rate;
- 14 3. For penalties pursuant to Labor Code §§ 203, 510, 558;
- 15 4. For attorneys' fees;
- 16 5. For costs of suit incurred herein; and
- 17 6. For such other and further relief as the Court may deem appropriate.

18 For the Third Cause of Action- Failure to Provide and/or Authorize Rest Breaks:

- 19 1. For compensatory damages according to proof at trial;
- 20 2. For additional wages pursuant to Labor Code § 226.7;
- 21 3. For penalties pursuant to Labor Code §§ 203 and 558;
- 22 4. For attorneys' fees;
- 23 5. For costs of suit incurred;
- 24 6. For prejudgment interest; and
- 25 7. For such other and further relief as the Court deems proper.

26 For the Fourth Cause of Action-Failure to Provide and/or Authorize Cool Down
27 Recovery Periods

- 28 1. For compensatory damages according to proof at trial;

2. For additional wages pursuant to Labor Code § 226.7;
3. For penalties pursuant to Labor Code §§ 203 and 558;
4. For attorneys' fees;
5. For costs of suit incurred;
6. For prejudgment interest; and
7. For such other and further relief as the Court deems proper.

For the Fifth Cause of Action- Safety Conditions Violations:

1. For compensatory damages according to proof at trial;
2. For attorneys' fees;
3. For costs of suit incurred;
4. For prejudgment interest; and
5. For penalties and such other and further relief as the Court deems proper.

For the Sixth Cause of Action- Failure to Reimburse for Business Expenses:

1. For compensatory damages according to proof at trial;
2. For attorneys' fees;
3. For costs of suit incurred;
4. For prejudgment interest; and
5. For penalties and such other and further relief as the Court deems proper.

For the Seventh Cause of Action- Failure to Pay Wages Timely Upon Termination:

1. For compensatory damages according to proof at trial;
2. For the wages of each Class Member at their regular daily rate up to a maximum of thirty (30) days;
3. For penalties pursuant to Labor Code §§ 203 and 558;
4. For attorneys' fees pursuant to Labor Code §§ 218.5 and 226, and any other applicable statute;
5. For all costs of suit herein incurred;
6. For an award of interest, including prejudgment interest, as provided by law and according to proof at trial; and
7. For such other relief, in law or in equity, as this Court deems just and proper.

1 For the Eighth Cause of Action- Inaccurate Payroll Records:

- 2 1. For compensatory damages according to proof at trial;
- 3 2. For penalties pursuant to Labor Code §§ 226 and 1174;
- 4 3. For attorneys' fees;
- 5 4. For costs of suit incurred;
- 6 5. For prejudgment interest; and
- 7 6. For such other and further relief as the Court deems proper.

8 For the Ninth Cause of Action- Unfair Business Practices:

- 9 1. For a preliminary and permanent injunction requiring Defendants to (1) pay all
10 owed wages; (2) adopt a lawful timekeeping practice; (3) provide meal and rest
11 periods; and (4) provide and maintain appropriate payroll records;
- 12 2. For compensatory damages according to proof at trial;
- 13 3. For attorneys' fees;
- 14 4. For costs of suit incurred;
- 15 5. For prejudgment interest; and
- 16 6. For such other and further relief as the Court deems proper.

17 For the Tenth Cause of Action – PAGA

- 18 1. That the Court determine that this action may be maintained as a PAGA representative
19 action under Cal. Labor Code. §2698 *et seq.*
- 20 2. That the Court award penalties pursuant to Labor Code §2698 *et seq.*;
- 21 3. That the Court order further relief, in law and equity, as it deems appropriate and just.

22 DATED: February 10, 2021

23 KOUL LAW FIRM
24 LAW OFFICES OF SAHAG MAJARIAN II

25 
26 _____
27 BY: Nazo Koulloukian, Esq.
28 Attorneys for Plaintiff FRANCISCA
AGUAYO and putative class members

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the putative class, hereby demands trial by jury to the full extent permitted by law.

DATED: February 10, 2021

KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff FRANCISCA
AGUAYO and putative class members

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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

November 3, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

L & A Plastic Molding
24895 E. La Palma Ave
Yorba Linda, CA 92887

Lortiz & Associates, Inc.
24895 E. La Palma Ave
Yorba Linda, CA 92887

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Francisca Aguayo
Employer: Lortiz & Associates, Inc., and L & A Plastic Molding

Dear Sir or Madam:

Francisca Aguayo (hereafter “Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for wage and hour claims against her employers Lortiz & Associates, Inc., and L & A Plastic Molding, collectively hereafter “Employer.”

Claimant worked for Employer for 21 years, until April 13, 2020, at or near minimum wage. Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(G) of Wage Order 1 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and her coworkers are required to deliver containers and other products to other employer locations after clocking out, off the clock, the result is underpayment for hours worked, including overtime hours worked.

Work Performed During Required Post-Shift Drive Time

Claimant and her coworkers were frequently required to deliver containers and other products to Employer’s other locations after they clocked out for the day. Claimant was required to do this at least once per month and she observed her coworkers making these unpaid deliveries as well. The location was approximately 10-15 minutes away. Claimant has also been employed under conditions prohibited by the wage order, and thus Employer has violated §1198. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

When employees like Claimant and her coworkers earning near minimum wage do not receive payment for all hours worked, including as a result of Employer’s practice of requiring them to deliver products to other locations while off the clock, the result is that Claimant and aggrieved employees are earning less than the statutory minimum wages for all hours worked in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 §4. Employer has been engaged in many unlawful employment practices which resulted in failure to pay minimum wage for all hours worked each pay period.

Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare

Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Provide Safe Working Conditions

(Cal. Labor Code §1198, Wage Order 1 ¶15.)

Employer's facility did not have any climate control and would get unsafely hot in the summer and freezing cold in the winter. Claimant and her coworkers worked in unbearable heat and cold in the facility.

Wage Order 1 ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Compliant Rest Breaks and Cool-Down Rest Periods

(Cal. Labor Code §§226, 226.7, 512, 1198, 2698 et seq.,

8 CCR 3202, Wage Order 1 ¶12.))

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 1.

Claimant and aggrieved employees were not allowed to take any breaks. The only break they were permitted was an unpaid meal period. If Claimant or her coworkers needed to use the bathroom during work hours, Employers required them to clock out during that time.

Moreover, as mentioned above, the warehouse did not have proper climate control. Title 8 of the California Code of Regulations cover standards for indoor heat exposure. Section 3203 requires that employers take the steps necessary to protect employees' health and safety when the temperature exceeds 85 degrees in the workplace. Labor Code 226.7

requires that breaks comply with requirements of the wage orders, OSHA, and the DOSHA. Here, no unpaid breaks were provided, and Claimant and aggrieved employees took unpaid bathroom breaks under conditions that violate California's rest break requirements.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these daily rest period violations. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

An employer's obligation to reimburse employees for mileage is undisputed. The California Supreme Court expressly endorsed the extension of §2802 to car mileage expenses in *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 561. Here, Claimant and her coworkers were required to deliver products to Employer's other facilities while off the clock in their own vehicles. However, no reimbursement for mileage or gas was ever paid to employees. Claimant's paystubs do not have any entries for reimbursement of any expenses.

As a result of these practices, Employers have violated Cal. Labor Code §§1198 and 2802, as well as the Industrial Welfare Commission Wage Orders. Employer is liable for civil penalties under PAGA pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 1199 and 2698 *et seq.*)

Employer knowingly and willfully failed to pay all compensation due and owing to Claimant and aggrieved employees at the time employment terminated. Because of Employer's unlawful timekeeping practices, Claimant and employees were underpaid and those amounts remained due and owing when they separated from the company.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment within the time periods required by Cal. Lab. Code §§201 and 202. Pursuant to §203, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202

of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records

(Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq*)

California Labor Code § 226(a) provides that “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the name of the employee and his or her social security number..., (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code § 1174 provides that “[e]very employer employing labor in this state shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.”

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and 1174. As a result of the unlawful employment practices discussed herein, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums, and total regular and overtime hours worked.

Such failures caused injury to Claimant and others, by, among other things, impeding her from knowing the total hours worked and the amount of wages to which she is and were entitled. Employer’s unlawful employment practices were knowing and intentional, and thus Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.

Sahag Majarian, II, Esq.

Attorney for Claimant

cc: Sahag Majarian, Esq.