

Nazo Koulloukian, SBN 263809
nazo@koullaw.com

KOUL LAW FIRM

A Professional Law Corporation
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

RECEIVED

MAR 11 2021

Sahag Majarian, II, Esq. SBN 146621
Sahagii@aol.com

LAW OFFICES OF SAHAG MAJARIAN II

18250 Ventura Blvd.
Tarzana, CA 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff,
RICARDO GONZALES, and all putative class members

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

RICARDO GONZALES, an individual, on
behalf of himself and all others similarly
situated,

Plaintiffs,

vs.

EDGEMINE, INC., a California
corporation, and DOES 1-50, inclusive,

Defendants.

Case No.: 21STCV05999

**FIRST AMENDED CLASS 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 Pay Earned Wages Upon Discharge, Waiting Time Penalties
7. Failure to Provide Timely, Accurate, Itemized Wage Statements
8. Unlawful Business Practices Bus & Prof. Code §17200
9. Private Attorneys General Act Penalties Labor Code §2698 et seq

JURY TRIAL DEMANDED

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

4 NATURE OF THE ACTION

5 1. Plaintiff brings this wage and hour class action complaint and PAGA
6 representative action on behalf of himself, and all others similarly situated against
7 EDGEMINE, INC., and the other Defendants DOES 1-50, inclusive, (hereafter
8 collectively “Defendants”). In this Complaint, Plaintiff alleges that Defendants failed to
9 pay all wages, including overtime wages, owed to employees, failed to provide rest and
10 cool-down recovery breaks, failed to pay minimum wage for all hours worked, failed to
11 provide safe working conditions, failed to provide accurate payroll records, and are liable
12 for waiting time penalties, and engaged in unfair competition. Accordingly, Plaintiff now
13 brings this class and representative action to recover unpaid wages and related relief on
14 behalf of himself, all others similarly situated. Plaintiff has also provided notice of his
15 claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency
16 (“LWDA”) and now brings this First Amended Complaint, including claims for civil
17 penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*

18 2. Plaintiff has filed this as a class action, under Code of Civil Procedure
19 section 382, and/or a representative action under Business & Professions Code §§17200
20 *et seq.* and Labor Code §2698, seeking damages and penalties on behalf of himself and
21 proposed Class Members (also referred to as “Class”), and aggrieved employees who are
22 or have been employed by Defendants from four years prior to the filing of this complaint
23 to the present.

24 3. The “Class Period” is designated as the time four years prior to the filing of
25 this Complaint through the trial date based upon the allegation that the violations of
26 California’s wage and hour laws and Unfair Competition Law, as described more fully
27 below, have been ongoing since at least four years prior to the date of this Complaint.
28

4. During the Class Period, Defendants had an unlawful policy and/or practice of: failure to pay for all hours worked, including overtime hours worked; (2) failing to pay minimum wage for all hours worked; (3) failure to provide rest periods; (4) failure to provide cool down recovery periods; (5) failure to provide safe working conditions due to inadequate climate control; (6) failure to timely pay all wages owed bimonthly and upon termination; (7) failing to provide accurate payroll records; (8) engaging in unlawful business practices for unfair competition; and (9) civil penalties pursuant to Labor Code §2698 *et seq.*, Private Attorneys General Act.

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

6. Defendants have treated all persons employed in California in such a way as to violate California's laws governing prompt payment of wages owed. Plaintiff asserts that Defendants have knowingly and with conscious disregard of the law refused to pay the Class Members all wages, including overtime wages, for work performed and due. Class Members are owed their back pay, plus interest and/or premiums and penalties under Business and Professions Code §17203 to compensate Class Members for the delay in receiving wages due.

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

THE PARTIES

8. Plaintiff RICARDO GONZALES is a resident of the State of California and lives in Los Angeles, California. Plaintiff was employed as an hourly, nonexempt employee for Defendants. Plaintiff worked for Defendants for over 10 years, until March 31, 2020, at or near minimum wage.

9. Defendant EDGEMINE, INC. is Corporation doing business in California with the capacity to sue and to be sued, and doing business, in the county of Los Angeles, 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 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 in this case that arose in this county.

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

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

1 15. Plaintiff has exhausted administrative remedies and this Court has jurisdiction
2 over Plaintiff's and Class Members' claims for penalties for Defendant's Labor Code
3 violations under Labor Code §§2699 and 2699.3.

4
5 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

6 16. During the Class Period and PAGA Period, Defendants committed various
7 violations of the California Labor Code, the UCL, CCR, and the applicable IWC Wage
8 Order, as alleged below in more detail. Defendants enforce multiple policies that violate
9 state law which are intended to increase its own profits to the detriment of its employees.
10 The following policies and practices have deprived Plaintiff, Class Members, and
11 Aggrieved Employees of payment for all hours worked and further damages, as set forth
12 below, and render Defendants liable for damages, including penalties under PAGA.

13 17. Defendants employed, upon information and belief, more than 100 current and
14 former non-exempt employees (hereafter "Class Members" or "Class") during the Class
15 Period.

16 18. Plaintiff, Class Members and Aggrieved Employees are employees of
17 Defendants working in their warehouse and manufacturing facilities.

18 19. Although Defendants used biometric fingerprint scanners and has record of the
19 exact time employees clock in and out, Defendants would round employee timeclock
20 entries to the shift start time instead of paying Plaintiff, Class Members and Aggrieved
21 Employees from their actual start to their actual end time. Plaintiff's wage statements
22 consistently state that he worked exactly 80.0 hours during the two week pay period,
23 clear evidence of daily timecard rounding. Plaintiff and the Class were not paid for all
24 time worked and the rounding policy in place unlawfully favored Defendants.

25 20. Plaintiff, Class Members, and Aggrieved Employees were denied payment for
26 all hour hours worked, including overtime pay owed, resulting from Defendants'
27 practices of sometimes requiring employees to work in excess of eight hours in a day and
28 forty in a week without overtime compensation of at least one and one-half times the
regular rate of pay.

1 21. Because Plaintiff, Class Members and Aggrieved Employees are working at or
2 near minimum wage, Defendants' failure to pay for all hours worked, including for all
3 overtime hours worked, resulted in payment of less than the statutory minimum wage to
4 employees.

5 22. Regarding rest breaks, Defendants failed to maintain a policy and practice that
6 provides its employees with off-duty rest periods as required by California law. Plaintiff,
7 Class Members and Aggrieved Employees were often unable to take their breaks, as
8 required by Cal. Lab. Code §226.7, §512 and Wage Order 1-2001. From time to time,
9 Plaintiffs did not receive the full or adequate required breaks. Plaintiffs received
10 shortened rest breaks as a result of the time it took them to walk from their workstations
11 to the breakroom. As a result of this distance, Plaintiffs had no choice but to frequently
12 take their 10 minute breaks at their work stations to ensure they were back in time.
13 Further, temperatures at the workstations, where the Plaintiffs were often forced to take
14 their breaks given the distance, frequently reached up to an intolerable 100 degrees.
15 Defendants failed to pay Plaintiffs and similarly situated employees the premium
16 compensation (one hour of pay at the employee's regular rate of pay for missed or
17 untimely rest periods) mandated by Labor Code §226.7 (b) for these shortened and
18 inadequate rest periods.

19 23. Defendants also failed to timely pay all wages owed upon termination, and
20 failed to furnish accurate wage statements to Plaintiff, Class Members, and Aggrieved
21 Employees. Finally, Defendants engaged in unfair competition.

22 24. Plaintiff brings this action on behalf of himself, and all other persons similarly
23 situated, to recover from Defendants unpaid overtime pursuant to the Industrial Wage
24 Order 1, alleging that Defendants frequently failed to pay all wages, including overtime
25 wages, owed to employees, failed to provide rest and cool-down recovery breaks, failed
26 to pay minimum wage for all hours worked, failed to provide safe working conditions,
27 failed to provide accurate payroll records, and are liable for waiting time penalties, and
28 engaged in unfair competition under Business and Professions Code § 17200.

1 25. This action has been brought and may properly be maintained as a class action
2 pursuant to the provisions of Code of Civil Procedure § 382 and/or a representative action
3 under Business & Professions Code §§17200 et seq. and Labor Code §2699 because the
4 proposed class is ascertainable and there is a well-defined community of interest.
5 Plaintiffs are among in excess of 100 employees with like job titles, duties, and hourly
6 wages, who have been similarly injured by Defendants' uniform unlawful conduct.

7 26. The "Relevant Time Period" or proposed "Class Period" as defined herein
8 commences four years prior to the date of filing this Complaint.

9 27. The Plaintiff Class: "All current and former hourly, non-exempt employees of
10 Defendant in California, at any time from four years prior to the initiation of this action
11 until the date of certification."

12 28. The proposed Subclasses are defined as follows:

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

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

22 29. Numerosity: Plaintiffs allege on information and belief that the Class Members
23 exceed 100 and therefore are so numerous as to make it impracticable to bring them all
24 before this Court.

25 30. Means of Identifying the Class: Plaintiffs allege on information and belief that
26 the Class Members can be readily be identified through a review of Defendants' payroll
27 records and the records of the company that handles payroll for Defendants.

28 31. Common Questions Predominate the Class: The rights which are the subject of
this action are common to all of the Class Members. There are questions of law and fact

presented herein which are common to the Class Members represented by Plaintiff and predominate over any questions that affect only individual members of the class. The common questions of law and fact include, but are not limited to, the following:

- i. Whether Defendants violated wage and hour laws by establishing a corporate policy and practice of requiring Plaintiffs to work hours in excess of eight hours in a day and forty in a week without overtime compensation at one and one-half times the regular rate of pay;
- ii. Whether Defendants' timecard rounding practice unlawfully benefitted the employer;
- iii. Whether Defendants violated wage and hour laws by failing to provide safe working conditions;
- iv. Whether Defendants violated wage and hour laws by failing to provide suitable climate control in its facilities;
- v. Whether Defendants violated wage and hour laws in failing to make rest periods available;
- vi. Whether Defendants violated wage and hour laws by failing to provide cool-down recovery periods;
- vii. Whether Defendants failure to pay the Class Members all wages owed, including overtime, 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 Plaintiff 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. Whether the Class Members are entitled to penalties under Labor Code §2699; and

xvii. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass member?

32. 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.

33. Adequacy: Plaintiff is an adequate representative of the class in that his 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. Plaintiff is represented by attorneys who have substantial class action experience in wage-and-hour and class action law.

34. Superiority: Class action adjudication is superior to other available methods because class action will achieve economies of time, effort, and expense as compared to separate lawsuits, and avoid inconsistent outcomes, because the same issues can be adjudicated in the same manner for the entire class. Furthermore, as the damages suffered by each individual member of the class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Plaintiffs are currently unaware of any pending litigation commenced by any of the Class Members involving the same issues in

1 this complaint. Further, it is desirable to concentrate the litigation of such claims in this
2 forum, and there are no difficulties likely to be encountered in the management of the
3 class action.

4 35. Manageability: Plaintiff is informed and believes that all allegations in this
5 Complaint are capable of being determined on the same evidence and based primarily on
6 review of corporate records and key testimony of Defendants' corporate representatives.
7 To the extent statistical analysis and representative evidence is necessary, Plaintiff and
8 proposed class counsel will employ competent experts and consultants in the field to
9 determine and review evidence for both issues of liability and damages in a scientifically
10 reliable manner.

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

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

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

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

23 39. During the Class Period, Labor Code Section 510 applied to Defendants'
24 employment of Plaintiff and the Class. At all times relevant hereto, Labor Code Section
25 510 and the applicable IWC order provided that it was unlawful to employ persons such
26 as members of the Class without compensating them at a rate of pay either one and one-
27 half (1½) or two (2) times that person's regular rate of pay, depending on the number of
28 hours worked by the person on a daily or weekly basis. Specifically, Wage Order 1
provided that Defendants were required to pay Plaintiff and the rest of the Class at the

1 rate of one and one-half (1½) times the Class member's regular rate of pay if the Class
2 member worked more than eight (8) hours in a day or more than forty (40) hours in a
3 work week. Furthermore, Defendants were required to pay Plaintiff and the rest of the
4 Class at the rate of two (2) times the Class member's regular rate of pay if the Class
5 member worked more than twelve (12) hours a day.

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

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

12 42. Employees are employed at or near minimum wage, thus failure to pay all
13 hours worked, including overtime hours worked, results in a payment of wages lower
14 than the statutory minimum wages in violation of Labor Code §1197, and the Class is
15 entitled to penalties under Labor Code §1197.1.

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

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

25 45. Plaintiffs further request an award of attorneys' fees pursuant to Labor Code
26 §§ 218.5 and 1194 and Code of Civil Procedure § 1021.5. Pursuant to Labor Code
27 §2699(a) Plaintiffs seek to recover civil penalties for which Defendant is liable for the
28 Labor Code violation as set forth in the foregoing. Plaintiffs also seek attorneys' fees and
costs pursuant to Labor Code §2699(g)(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

46. Plaintiffs incorporate all preceding paragraphs as if set forth in full herein.

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

48. Section 2(K) of Wage Order 4 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.”

49. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked as a result of Defendants’ practices described above. Plaintiffs were made to work in excess of eight hours in a day and forty in a week but did not pay overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code § 510.

50. Additionally, when employees like Plaintiff and his coworkers earning near minimum wage do not receive payment for all hours worked, including as a result of Defendants’ practice of rounding timecard entries in a manner that benefitted the employer, the result is that Plaintiff and class members are earning less than the statutory minimum wages for all hours worked.

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

52. For all time worked but not compensated, Plaintiff and Class Members are entitled to not less than the California minimum wage, and pursuant to Labor Code

1 section 1194.2, subdivision (a), liquidated damages in an amount equal to the unpaid
2 minimum wage and interest thereon.

3 53. Pursuant to Labor Code section 1194, Plaintiff and the Class are also entitled
4 to attorneys' fees, costs and interest according to proof.

5 54. In violation of California law, Defendants have knowingly and willfully
6 refused to perform their obligations to compensate Plaintiffs for all minimum wages
7 earned and for all hours worked. As a direct result, Plaintiffs have suffered, and continue
8 to suffer, substantial losses related to the use and enjoyment of such wages, lost interest
9 on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully
10 perform their obligations under state law, all to their respective damage in amounts
11 according to proof at time of trial, but in amounts in excess of the minimum jurisdiction
12 of this Court. Defendants committed the acts alleged herein knowingly and willfully, with
13 the wrongful and deliberate intention of injuring the rights of Plaintiff and the Class.
14 Plaintiff and Class members are thus entitled to recover nominal, actual, compensatory,
15 punitive and exemplary damages in the amounts according to proof at time of trial.

16 55. Defendants' conduct as described herein violates Labor Code sections 200,
17 218.5, 226, 558, 1194, and 1197. Therefore, pursuant to Labor Code sections 200, 218.5,
18 226, 558, 1194 and 1197.2, Plaintiff and the Class members are entitled to recover the
19 unpaid balance of wages owed by Defendants, plus interest, penalties, attorneys' fees,
20 expenses and cost of suit. Pursuant to Labor Code §2699(a) Plaintiffs seek to recover
21 civil penalties for which Defendant is liable for the Labor Code violation as set forth in
22 the foregoing. Plaintiffs also seek attorneys' fees and costs pursuant to Labor Code
23 §2699(g)(1).

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

28 56. Plaintiffs incorporate all preceding paragraphs as if set forth in full herein.

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

3 58. Plaintiffs allege on information and belief that during the Class Period, as
4 alleged above, class members frequently were forced to stay at their workstations during
5 their break periods because the breakroom was too far from their workstations to make it
6 there and back in time. Conditions at their workstations, at times, exceeded temperatures
7 of 100 degrees. As a result of these conditions Plaintiffs received shortened and
8 inadequate rest breaks.

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

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

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

23 62. Plaintiffs allege on information and belief that Defendants' failure to pay the
24 Class Members the unpaid balance of these rest period wages upon the termination of
25 their employment, as alleged in this cause of action, was willful, and thus entitles the
26 Class Members to penalties under Labor Code § 203. Specifically, Labor Code § 203
27 provides that an employee's wages shall continue as a penalty until paid or for a period of
28 up to 30 days from the time they were due, whichever period is shorter.

63. Plaintiffs will seek restitution pursuant to Labor Code §558(a)(3) for himself and the proposed Class Members for each violation of Labor Code §226.7. Further, as a derivative claim of failing to pay the premium pay of one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided, Plaintiffs will seek statutory penalties under Labor Code §226(a)(1) because the failure to pay such premium wages rendered the gross pay calculations inaccurate in violation of Labor Code §226(e)(2)(B)(i). Plaintiffs further seek prejudgment interest, reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code and Code of Civil Procedure §1021.5, or other applicable law. Pursuant to Labor Code §2699(a) Plaintiffs seek to recover civil penalties for which Defendant is liable for the Labor Code violation as set forth in the foregoing. Plaintiffs also seek attorneys' fees and costs pursuant to Labor Code §2699(g)(1).

//

//

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

64. Plaintiffs incorporate all preceding paragraphs as if set forth in full herein.

65. 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.

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

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

If an employer fails to provide an employee a... recovery period in accordance with a state ., law, including, but not limited to an applicable

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

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

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

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

22 71. Defendants' conduct as alleged herein violates California Code of Regulation,
23 Title 8, section 3395 and Labor Code sections 226.7 and 1198. Plaintiff and the Class are
24 therefore entitled to compensation and penalties as provided by law. Plaintiffs seek all
25 available remedies for Defendants' violations including, but not limited to any and all
26 wages due, penalties, monies, interest, attorneys' fees, and costs to the extent permitted
27 by law. Pursuant to Labor Code §2699(a) Plaintiffs seek to recover civil penalties for
28

1 which Defendant is liable for the Labor Code violation as set forth in the foregoing.
2 Plaintiffs also seek attorneys' fees and costs pursuant to Labor Code §2699(g)(1).

3
4 **FIFTH CAUSE OF ACTION**
5 **FAILURE TO PROVIDE SAFE WORKING CONDITIONS**
6 **California Labor Code sections 1198, 8 C.C.R. 3203, Wage Order 1**
7 **(Against Defendant for Safe Working Conditions Violations)**

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

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

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

19 75. Defendant's facility did not have any climate control and would get unsafely
20 hot in the summer and freezing cold in the winter. Plaintiff and Class Members worked in
21 unbearable heat and cold in the facility.

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

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

27 78. Defendants' conduct as alleged herein violates California Code of Regulation,
28 Title 8, section 3203 and Labor Code sections 226.7 and 1198. Plaintiff and the Class are
therefore entitled to compensation and penalties as provided by law. Plaintiffs seek all
available remedies for Defendants' violations including, but not limited to any and all

1 wages due, penalties, monies, interest, attorneys' fees, and costs to the extent permitted
2 by law. Pursuant to Labor Code §2699(a) Plaintiffs seek to recover civil penalties for
3 which Defendant is liable for the Labor Code violation as set forth in the foregoing.
4 Plaintiffs also seek attorneys' fees and costs pursuant to Labor Code §2699(g)(1).

5
6 **SIXTH CAUSE OF ACTION**
7 **LATE PAY AND WAITING TIME PENALTIES**
8 **Cal. Lab. Code §§201, 202, 203, 204, and 1199**
9 **(All Plaintiffs Against All Defendants)**

10 79. Plaintiffs incorporate all preceding paragraphs as if set forth in full herein.

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

21 81. Plaintiffs are informed and believe and, based thereon, allege that, during the
22 Class period, Defendants willfully failed to pay former employees in the Class their
23 earned and unpaid wages, either at the time of their discharge or within seventy-two (72)
24 hours of their quitting. Furthermore, Defendants failed to pay Plaintiffs, on a timely
25 basis, all of the wages due them at the time of termination or quitting, including overtime
26 wages. Defendants therefore violated Labor Code Section 201 and 202.

27 82. As alleged above, by failing to pay for all hours worked by Plaintiff, Class
28 Members and Aggrieved Employees, Defendants underpaid the actual amount of regular
hours worked by Plaintiff and the rest of the Class. These unpaid amounts were still
owing to former employees in the Class when they ended their employment with

1 Defendants. Consequently, Defendants failed to timely pay all wages due former
2 employees in the Class at the time that their employment ended.

3 83. During the Class Period, Labor Code Section 203 provided that, if employers
4 such as Defendants willfully fail to pay any wages of an employee who is discharged or
5 who quits, the wages of the employee shall continue as a penalty from the due date
6 thereof at the same rate until paid or until an action therefore is commenced, but the
7 wages shall not continue for more than thirty (30) days. Accordingly, Class Members
8 who were discharged or who quit during the Class Period are entitled to receive their
9 wages for each day they were not paid, at their regular rate of pay, up to a maximum of
10 thirty (30) days.

11 84. Defendants were required to pay Plaintiff, Class Members, and Aggrieved
12 Employees all wages earned twice during each calendar month pursuant to Labor Code
13 §204(a). Defendants failed to pay all wages earned to employees as a result of the
14 unlawful employment policies and practices discussed herein. As a result of these
15 practices, employees were underpaid for hours worked, including penalty wages, and this
16 underpayment resulted in a failure to pay all wages owed twice per month.

17 85. Plaintiffs will seek both restitution pursuant to Labor Code §558(a)(3) for
18 himself and Class Members for each violation of Labor Code §203 during the Class
19 Period, in an amount according to proof based on Defendants' corporate and payroll
20 records. Pursuant to Labor Code §2699(a) Plaintiffs seek to recover civil penalties for
21 which Defendant is liable for the Labor Code violation as set forth in the foregoing.
22 Plaintiffs also seek attorneys' fees and costs pursuant to Labor Code §2699(g)(1).

23
24 **SEVENTH CAUSE OF ACTION**
25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS AND**
26 **MAINTAIN ACCURATE RECORDS**
27 **Cal. Labor Code §§ 226, 1174, and 1199**
28 **(All Plaintiffs Against All Defendants)**

86. Plaintiffs incorporate all preceding paragraphs as if set forth in full herein.

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

11 88. Labor Code § 226(a) further provides that “[t]he deductions made from
12 payments of wages shall be recorded in ink or other indelible form, properly dated,
13 showing the month, day, and year, and a copy of the statement or a record of the
14 deductions shall be kept on file by the employer for at least three years at the place of
15 employment or at a central location within the State of California.”

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

23 90. Labor Code § 1174 provides that “[e]very employer employing labor in this
24 state shall ... (c) [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors [and] (d) [k]eep at a central location in the state or at
26 the plants or establishments at which employees are employed, payroll records showing
27 the hours worked daily by and the wages paid to, and the number of piece-rate units
28 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

1 for this purpose by the commission, but in any case shall be kept on file for not less than
2 two years.”

3 91. Labor Code § 1174.5 provides that “[a]ny person employing labor who
4 willfully fails to maintain the records required by subdivision (c) of Section 1174 or
5 accurate and complete records maintained by subdivision (d) of Section 1174, or to allow
6 any member of the commission or employees of the division to inspect records pursuant
7 to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred
8 dollars (\$500).”

9 92. Plaintiffs allege on information and belief that Defendants knowingly and
10 intentionally failed to furnish Plaintiff and Class Members with accurate itemized
11 statements from time to time for each pay period that they worked, and frequently failed
12 to maintain accurate payroll records of the Class Members as mandated by Labor Code
13 §§ 226 and 1174. Inaccuracies in the wage statements and payroll records were caused,
14 among other reasons, by Defendants’ unlawful timekeeping practices that resulted in
15 underreporting hours worked and overtime hours worked. Plaintiffs allege on information
16 and belief that as a result of Defendants’ conduct, the Class Members sustained damages.
17 As such, the Class Members are entitled to civil penalties and an award of costs and
18 attorney's fees under § 226(e). In addition, the Class Members are entitled to recover civil
19 penalties under § 1174.5. Pursuant to Labor Code §2699(a) Plaintiffs seek to recover
20 civil penalties for which Defendant is liable for the Labor Code violation as set forth in
21 the foregoing. Plaintiffs also seek attorneys’ fees and costs pursuant to Labor Code
22 §2699(g)(1).

23 **EIGHTH CAUSE OF ACTION**
24 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**
25 **California Business and Professions Code section 17200, et seq.**
26 **(All Plaintiffs Against All Defendants)**

27 93. Plaintiffs incorporate all preceding paragraphs as if set forth in full herein.

28 94. The unlawful timekeeping practices resulting in unpaid wages, unpaid
overtime, failure to provide required rest and cool down recovery breaks, failure to

1 provide safe working conditions, and failure to pay wages as required twice per month
2 and timely upon termination, constitute unlawful and unfair business acts and/or practices
3 within the meaning of Business and Professions Code §17200 *et seq.*, including but not
4 limited to violations of the applicable State of California Industrial Welfare Commission
5 Wage Orders, regulations and statutes, or are practices which are otherwise unfair,
6 deceptive and unlawful.

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

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

13 97. In addition, unless the Court imposes an injunction against Defendants
14 requiring Defendants to pay full wages in the future, Plaintiff and Class Members will
15 suffer immediate and irreparable harm and will have no adequate remedy at law.
16 Accordingly, the Class Members request that this Court enter a preliminary and
17 permanent injunction requiring Defendants to cease and desist from their unlawful
18 business practices and pay compensation as required by California law.

19 98. This cause of action is brought as a cumulative remedy as provided in
20 Business and Professions Code §17205, and is intended as an alternative remedy for
21 restitution for Plaintiff and members of the relevant subclasses for any portion of time
22 commencing within three (3) years before filing this complaint, and as the primary
23 remedy for Plaintiff, and the relevant subclasses, for any portion of time during the *fourth*
24 *year* before filing this Complaint, as this period of time exceeds the general statute of
25 limitations on statutory wage claims.

26 99. Plaintiff, on behalf of himself and the proposed Class requests the violations of
27 each defendant be enjoined, and other equitable relief provided, as this court deems
28 proper, including an order requiring Defendants to make tax contributions on the accrued
wages in the form of FICA, Social Security, Medicare, Unemployment Insurance or other

1 applicable payments. Defendants' conduct, business acts and practices undermined
2 competition and was done in order to avoid costs other lawful employers comply with in
3 order to avoid payment of full compensation, ages and statutory penalties owed.

4 100. Plaintiff and the Class Members request relief, as described below, including
5 restitution owed, in an amount according to proof, and for reasonable costs of suit and
6 reasonable attorney's fees as provided by the Labor Code and the Code of Civil
7 Procedure § 1021.5, or other applicable law.

8
9 **NINTH CAUSE OF ACTION**
10 **STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT,**
11 **LABOR CODE §2698 et seq. AGAINST ALL DEFENDANTS**

12 101. Plaintiffs incorporate by reference in this cause of action each allegation of
13 the preceding paragraphs as though fully set forth herein.

14 102. Under the Private Attorneys General Act of 2006, Labor Code §§2698-
15 2699.5, an aggrieved employee, on behalf of herself and other current or former
16 employees, may recover penalties under any provision of the Labor Code that provides
17 for civil penalties. These penalties are in addition to any other relief available under the
18 Labor Code. Plaintiff is an aggrieved employee under PAGA.

19 103. As set forth above, Defendants have committed numerous violations for
20 which the Labor Code provides for penalties, including violations of all applicable Labor
21 Code provisions set forth in the foregoing causes of action. Labor Code §2699.5
22 identifies the aforementioned Labor Code provisions as statutes to which §2699.3's
23 procedural requirements must be met before a penalty may be assessed under §2699(f).
24 Plaintiffs have complied with the procedural requirements specified in §2699.3 by
25 providing written notice to the Defendants and the Labor & Workforce Development
26 Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and correct copy of the
27 Notice correspondence showing compliance with §2699.3. No notice of intent to
28 investigate the alleged violations was provided within the statutory period. Consequently,

1 Plaintiffs have exhausted administrative remedies, and on behalf of themselves and all
2 other aggrieved current and former employees of Defendants. Plaintiffs, therefore, now
3 pursue this cause of action as permitted by §2698, et seq.

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

13 105. In addition, if Plaintiffs succeed in enforcing these rights affecting the public
14 interest, then attorneys' fees may be awarded to Plaintiffs and against Defendants under
15 Code of Civil Procedure §1021.5 and other applicable law in part, because:

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

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

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

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

27 **e.** An award of attorneys' fees and costs is necessary for the prosecution of
28 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

1 and hour statutes and frustrate the long-standing recognition by the California legislature
2 and the courts that such statutes, as pled herein, are not merely a matter of private
3 concern between employer and employee to be eviscerated by considerations of waiver,
4 contributory negligence, good or bad faith, and private agreements. Rather, the wage and
5 hour statutes have been described as a matter of public concern, were designed to provide
6 minimum substantive guarantees to individual workers and are essential to public
7 welfare.

8 **REQUEST FOR RELIEF**

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

11 For Causes of Action 1-8

- 12 1. That the Court determine that this action may be maintained as a class action under
13 Code of Civil Procedure § 382;
- 14 2. Provision of class notice to all members of the Class;
- 15 3. That Defendant is found to have violated the above-referenced provisions of the
16 Labor Code, CCR and IWC Wage Order 5-2001 as to Plaintiff, Class Members and
17 aggrieved employees;

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

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

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

- 26 1. For compensatory damages according to proof at trial;
- 27 2. For prejudgment interest, at the legal rate;
- 28 3. For penalties pursuant to Labor Code §§ 203, 510, 558;
4. For attorneys' fees;

- 1 5. For costs of suit incurred herein; and
- 2 6. For such other and further relief as the Court may deem appropriate.

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

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

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

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

20 For the Fifth Cause of Action- Safety Conditions Violations:

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

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

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

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.

For the Seventh Cause of Action- Inaccurate Payroll Records:

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

For the Eighth Cause of Action- Unfair Business Practices:

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

For the Ninth Cause of Action- PAGA

1. For penalties pursuant to the Private Attorneys General Act, Labor Code §2698 et seq.

2. For attorneys' fees;
3. For costs of suit incurred;
4. For such other and further relief as the Court deems proper.

DATED: March 10, 2021

KOUL LAW FIRM


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

DEMAND FOR JURY TRIAL

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

DATED: March 10, 2021

KOUL LAW FIRM


BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff RICARDO
GONZALES and putative class members

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

December 30, 2020

Via E-filing:

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

Via Certified U.S. Mail:

Edgemine, Inc.
1801 E. 50th Street
Los Angeles, CA 90058

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Ricardo Gonzales
Employer: Edgemine, Inc.

Dear Sir or Madam:

Ricardo Gonzalez (hereafter “Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of LAW OFFICES OF SAHAG MAJARIAN II, to represent him, and all other aggrieved employees, for wage and hour claims against his employer Edgemine, Inc., hereafter “Employer.”

Claimant worked for Employer as an hourly, nonexempt employee until March 31, 2020, when he was laid off due to COVID-19.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it 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.”

Employer engages in numerous practices resulting in failure to pay all hours worked. Although Employer used biometric fingerprint scanners and has record of the exact time employees clock in and out, Employer would round employee timeclock entries to the shift start time instead of paying Claimant and aggrieved employees from their actual start to their actual end time. Claimant’s wage statements consistently state that he worked exactly 80.0 hours during the two week pay period, clear evidence of daily timecard rounding. Claimant was not paid for all time worked and the rounding policy in place unlawfully favored Employer.

When employees like Claimant and aggrieved employees earning at or near minimum wage do not receive full payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Failure to Pay Overtime Wages

Employer has required Claimant and others to work hours in excess of eight hours in a day and forty in a week but has not paid these employees overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code §510. As a result, Claimant and aggrieved employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages- Required Minimum Wage & Penalty Wages

Employer failed to pay Claimant and aggrieved employees at the lawful rate for all hours worked as a result of Employer’s practice of rounding timecard entries to the shift start time. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, including hours that were rounded off employee timecards, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B).

Based on the above violations, Claimant and aggrieved employees have 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 §§558 and 2699 *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 Provide Safe Working Conditions

(Cal. Labor Code §1198, Wage Order 1 ¶15, 8 CCR 3202.)

Employer's manufacturing facility would get unsafely hot during the hot Southern California summers, often over 100 degrees. Employer does not have proper climate control or exhaust fans to cool the facility and keep temperature levels safe. Claimant and his coworkers worked in unbearable heat in the facility. 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.

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 received shortened rest breaks as a result of the time it took them to walk from their workstations to the breakroom. As a result of this distance, Claimant and employees had no choice but to frequently take their 10 minute breaks at their work station to ensure they were back in time.

As mentioned above, the warehouse did not have proper ventilation and had ineffective 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. Since breaks do not comply because the facilities within which breaks were taken were unsafely hot, Employer has violated California's rest break requirements. Moreover, Claimant and employees were denied required cool-down rest periods when temperatures were unreasonably hot.

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 uncompliant rest periods. 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 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 rest premiums, and total regular and overtime hours worked.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages and vacation pay to which they are 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 blue ink, appearing to read 'Nazo Koulloukian', written over a horizontal line.

Nazo Koulloukian, Esq.
Attorney for Claimant

cc: Sahag Majarian, Esq.

PROOF OF SERVICE

Case No. 21STCV05999

Gonzales v. Edgemine, Inc., et al.

I, TALINE HANNA declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 3435 Wilshire Blvd. Ste. 1710, Los Angeles, California 90010.

On March 10, 2021, I served the foregoing document described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

- X by placing the document(s) listed above in a sealed envelope, addressed as set forth below, and placing the envelope for collection and mailing in the place designated for such in our offices, following ordinary business practices.
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00PM.
- by transmitting via electronic mail the document(s) listed above to the electronic mailing address set forth below on this date before 5:00PM.
- by causing a true copy thereof to be personally delivered to the person(s) at the address(es) set forth below.

on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at Los Angeles, California addressed as follows:

SEE ATTACHED SERVICE LIST

I am readily familiar with the ordinary practice of the business of collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this March 10, 2021, in Los Angeles, California.



TALINE HANNA

PROOF OF SERVICE

Case No. 21STCV05999

Gonzales v. Edgemine, Inc., et al.

Defendant Edgemine, Inc.
KEVIN CHANG KANG
335 BLYTHE ROAD
LA CANADA FLINTRIDGE CA 91011