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8 Attorneys for Representative Plaintiff(s), *et al.*
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF FRESNO**
12

13 JESSE CRUZ, individually, and on behalf of
all others similarly situated,
14

Plaintiff,
15

vs.
16

STRATAS FOODS LLC; and DOES 1
through 100, inclusive,
17

Defendants.
18
19
20

Case No. 21CECG00450

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF, PENALTIES AND
RESTITUTION**

21 Representative Plaintiff alleges as follows:
22

23 **INTRODUCTION**

24 1. This is a class and representative action seeking unpaid compensation for wages,
25 meal and/or rest period violations, interest thereon, liquidated damages and other penalties,
26 injunctive and other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*,
27 California Labor Code §§ 200-204, 210, 218, *et seq.*, 223, 225.5, 226, *et seq.*, 256, 510, 512, 558,
28

1 1174, 1174.5, 1182.12, 1194, *et seq.*, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, 2802, California
2 Business and Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5.

3 2. Representative Plaintiff Jesse Cruz (“Representative Plaintiff” or “Plaintiff”) brings
4 this action individually and on behalf of all other persons similarly situated (“Class Members”
5 and/or the “Plaintiff Class” and/or “Aggrieved Employees”) who are or have been employed by
6 Defendants Stratas Foods LLC and/or Does 1 through 100, inclusive (collectively “Defendants”)
7 as non-exempt employees within the State of California within the applicable class period.

8 3. The relevant “class period” begins on February 16, 2017 and extends through trial,
9 based upon the allegation that the violations of California’s wage and hour laws, as described more
10 fully below, have been ongoing throughout that time.

11 4. The relevant period for recovery of penalties under California’s Private Attorneys
12 General Act begins on February 11, 2020 and extends through trial (i.e., the “PAGA period”),
13 based upon the allegation that the violations of California’s wage and hour laws, as described more
14 fully below, have been ongoing throughout that time.

15 5. Representative Plaintiff and those persons working for Defendants in California as
16 non-exempt employees within these periods and trial, inclusive, are referred to herein as “Class
17 Members,” “Aggrieved Employees” or both.

18 6. Throughout the class and PAGA periods, Defendants have had a consistent policy
19 of (1) unlawfully denying Representative Plaintiff, Aggrieved Employees and Class Members
20 statutorily-mandated meal and rest periods, (2) failing to pay these workers’ wages in the event of
21 such failures, (3) willfully failing to provide these workers with accurate semimonthly itemized
22 wage statements reflecting the total number of hours each worked, the applicable deductions, and
23 the applicable hourly rates in effect during the respective pay periods, and (4) willfully failing to
24 pay compensation in a prompt and timely manner to those workers whose employment with
25 Defendants have terminated.

26 7. Defendants operate/operated a food production facility within California for which
27 Representative Plaintiff worked as a boiler technician and loader. Representative Plaintiff is
28 informed and believes and, on that basis, alleges that, within the class and PAGA periods,

1 Defendants employed scores, if not hundreds, of individuals in California to perform these
2 services, employment positions which did not, and currently do not, meet any known test for
3 exemption from the payment of overtime wages, and/or the entitlement to meal or rest periods.

4 8. Despite actual knowledge of these facts and legal mandates, Defendants have
5 enjoyed and continue to enjoy an advantage over their competition and a resultant disadvantage to
6 their workers by electing not to pay all wages due (including missed meal and rest period
7 premiums) and/or all penalties due (including “waiting time” penalties) to their California-based
8 non-exempt employees.

9 9. Representative Plaintiff is informed and believes and, on that basis, alleges that
10 Defendants’ officers knew of these facts and legal mandates yet, nonetheless, repeatedly
11 authorized and/or ratified the violation of the laws cited herein.

12 10. Despite Defendants’ knowledge of their workers’ entitlements in these respects,
13 Defendants failed to provide same to Representative Plaintiff, Aggrieved Employees and/or Class
14 Members, in violation of California state statutes, the applicable California Industrial Welfare
15 Commission Wage Order, and Title 8 of the California Code of Regulations. This action is brought
16 to redress and end this prolonged pattern of unlawful conduct once and for all.

17
18 **JURISDICTION AND VENUE**

19 11. This Court has jurisdiction over the claims brought herein for unpaid wages, other
20 damages and/or penalties, etc. under, *inter alia*, the applicable Industrial Welfare Commission
21 Wage Order (as effectuated through the California Labor Code), Title 8 of the California Code of
22 Regulations, Labor Code §§ 201-204, 226, 226.7, 512, 1174, 2699 and 2802, *inter alia*, and/or the
23 California Code of Civil Procedure § 1021.5.

24 12. This Court also has jurisdiction over the claims brought herein for injunctive relief
25 and restitution of ill-gotten benefits arising from Defendants’ unfair and/or fraudulent business
26 practices under California Business & Professions Code § 17200, *et seq.*

27 13. Venue as to Defendants is proper in this judicial district pursuant to California Code
28 of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County

1 where numerous Aggrieved Employees and Class Members worked, transact business, have
2 agents, and are otherwise within this Court's jurisdiction for purposes of service of process. The
3 unlawful acts alleged herein have had a direct effect on Representative Plaintiff, Aggrieved
4 Employees and those similarly situated within the State of California and within this County.
5

6 **PLAINTIFF(S)**

7 14. Representative Plaintiff Jesse Cruz is a natural person who was employed by
8 Defendants as a boiler technician and loader during the class and PAGA periods.

9 15. In these capacities, Representative Plaintiff is and was entitled to full, uninterrupted
10 and statutorily-mandated meal and rest periods, payment of minimum and/or overtime wages,
11 reimbursements for business-related expense incurrences, as well as other benefits of employment
12 as set forth herein.
13

14 **DEFENDANT(S)**

15 16. Defendant Stratas Foods LLC is a supplier of fats, oils, mayonnaise, dressings and
16 sauces to the Foodservice, Food Ingredients and Retail Private Label markets in North America.

17 17. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
18 all times herein relevant, Defendants Stratas Foods LLC and Does 1 through 100 did business
19 within the State of California providing food production services.

20 18. Defendant Stratas Foods LLC is a limited liability company formed under the laws
21 of the State of Delaware.

22 19. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
23 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
24 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
25 basis, alleges that, at all relevant times herein mentioned, Defendants, and each of them, employed
26 and/or exercised control over the wages, hours, and/or working conditions of Representative
27 Plaintiff, Aggrieved Employees and Class Members within the State of California.
28

20. The Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. The Representative Plaintiff will seek leave of court to amend this Complaint when such names are ascertained. The Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants was responsible in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged, and that the damages/penalties hereby alleged and sought by Representative Plaintiff, Aggrieved Employees and/or Class Members were proximately caused thereby.

21. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

CLASS ACTION ALLEGATIONS

22. Representative Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated and proximately damaged by Defendants' conduct including, but not necessarily limited to, the following Plaintiff Class:

"All persons employed by Defendants as non-exempt employees in California on or after February 16, 2017."

23. Defendants' officers and directors are excluded from the Plaintiff Class.

24. Pursuant to California Rule of Court 3.765(b), Representative Plaintiff reserves the right to amend or modify the class definition to achieve greater specificity, by further division into sub-classes and/or by limitation to particular issues.

25. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable, to wit:

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy as to certain claims brought herein. The members of the Plaintiff Class are so numerous

that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that there are sufficient Class Members to meet the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records required to be maintained by Defendants.

b. Commonality: Representative Plaintiff and Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:

- 1) Whether Defendants maintained a policy and/or practice of failing to provide employees with meal and/or rest periods and/or failing to pay premium wages to Class Members in the event of such failures;
- 2) Whether Defendants violated California Labor Code §§ 201-204 by failing to pay wages due and owing each pay period and/or at the time that certain Class Members' employment with Defendants terminated;
- 3) Whether Defendants violated California Labor Code § 226 by failing to provide accurate semimonthly itemized statements to Class Members of their amounts of gross and net wages, and total hours worked by each and at all applicable hourly rates in effect during the respective pay period(s);
- 4) Whether Defendants violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
- 5) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203;
- 6) Whether Defendants violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks and all wages due to Class Members working eligible shifts.

c. Typicality: Representative Plaintiff's claims are typical of the claims of Class Members. Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained

competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those applicable to the Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

26. Representative Plaintiff, Aggrieved Employees and Class Members are and/or were non-exempt employees who worked for Defendants in California within the relevant time period. In these roles, Representative Plaintiff, Aggrieved Employees and Class Members provided services including technical and loading services.

27. As described herein, Defendants knowingly failed to adequately compensate Representative Plaintiff, Aggrieved Employees and Class Members for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the applicable IWC Wage Order, the applicable California Code of Regulations provisions and provisions of the California Labor Code, thereby enjoying a significant competitive edge over other service providers.

28. Defendants have declined to pay these wages, even upon their workers' terminations from or their resignation of employment, in blatant violation of California Labor Code § 201 and/or § 202.

29. California Labor Code §§ 201 and 202 require Defendants to pay severed employees all wages due and owed immediately upon discharge or within 72 hours of resignation of those positions, in most circumstances. California Labor Code § 203 provides that an employer

1 who willfully fails to timely pay such wages must, as a penalty, continue to pay each subject
2 employee's wages until the back wages are paid in full or an action is commenced, and the payment
3 of such penalty shall continue for a period of time up to 30 days.

4 30. Furthermore, despite knowledge of these workers' entitlement to compensation for
5 all hours worked, Defendants violated California Labor Code § 1174(d) by failing to provide or
6 require the use, maintenance or submission of time records by Representative Plaintiff, Aggrieved
7 Employees and Class Members. Defendants also failed to provide these workers with accurate
8 semimonthly itemized statements of the total number of hours worked by each, and all applicable
9 hourly rates in effect during each pay period, in violation of California Labor Code § 226. In failing
10 to provide the required documents, Defendants have not only failed to pay their workers the full
11 amount of compensation due, but have also, at least largely, shielded themselves from their
12 employees' scrutiny by concealing the magnitude and financial impact of their wrongdoing that
13 such documents might otherwise have led workers to discover.

14 31. Representative Plaintiff, Aggrieved Employees and all persons similarly situated
15 are entitled to unpaid compensation, yet, to date, have not received such compensation despite
16 many of them having been terminated by Defendants and/or resigned from Defendants' employ.
17 More than 30 days have passed since certain Aggrieved Employees and Class Members have left
18 Defendants' employ.

19 32. As a consequence of Defendants' willful conduct in not paying former employees'
20 compensation for all hours worked in a prompt and timely manner, certain members of the Plaintiff
21 Class are entitled to up to 30 days wages as a penalty under California Labor Code § 203, together
22 with attorneys' fees and costs.

23 33. As a direct and proximate result of Defendants' unlawful conduct, as set forth
24 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
25 including the loss of earnings for hours worked on behalf of Defendants, in an amount to be
26 established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as
27 set forth herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant
28 to California Labor Code § 203) and penalties for failure to provide semimonthly statements of

1 hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an
2 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
3 conduct, as set forth herein, Representative Plaintiff, Aggrieved Employees and Class Members
4 are also entitled to recover costs and attorneys' fees pursuant to statute(s).

5 34. Representative Plaintiff seeks injunctive relief prohibiting Defendants from
6 engaging in the complained-of illegal labor acts and practices in the future. Representative Plaintiff
7 also seeks restitution of costs incurred by Representative Plaintiff and Class Members under
8 California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will
9 continue unchecked, while their non-exempt workers bear the financial brunt of Defendants'
10 unlawful conduct.

11 35. Representative Plaintiff Jesse Cruz has complied with the procedures necessary to
12 maintain a civil action against Defendants for violation of California's Private Attorneys General
13 Act, as specified in California Labor Code § 2699.3.

14 36. On February 11, 2021, Representative Plaintiff Jesse Cruz served and filed a notice
15 upon the California Labor and Workforce Development Agency ("LWDA") and Defendants in
16 compliance with Labor Code §§ 2699, *et seq.*

17
18 **FIRST CAUSE OF ACTION**
19 **UNLAWFUL FAILURE TO PAY WAGES**
(California Labor Code §§ 200-204, 510, 558, 1194 and 1198; IWC Wage Order)

20 37. Each and every allegation of the preceding paragraphs is incorporated in this cause
21 of action with the same force and effect as though fully set forth herein.

22 38. Throughout the class period, Representative Plaintiff, Aggrieved Employees and
23 Class Members performed work for Defendants, oftentimes in excess of eight hours in a workday
24 and/or 40 hours in a workweek. The number of hours will be proven at trial.

25 39. Throughout the class period, Defendants refused to compensate Representative
26 Plaintiff, Aggrieved Employees and Class Members for all of the wages earned, in violation of the
27 applicable IWC Wage Order, the applicable California Code of Regulations provisions and
28 provisions of the California Labor Code.

1 40. Throughout the class period, Defendants were aware of, and were under a duty to
2 comply with, the overtime provisions of the California Labor Code including, but not limited to,
3 California Labor Code §§ 510, 1194, and 1198.

4 41. California Labor Code § 510(a), in pertinent part, provides:

5 Any work in excess of eight hours in one workday and any work in
6 excess of 40 hours in any one workweek and the first eight hours
7 worked on the seventh day of work in any one workweek shall be
compensated at the rate of no less than one and one-half times the
regular rate of pay for an employee.

8 42. California Labor Code § 1194(a), in pertinent part, provides:

9 Notwithstanding any agreement to work for a lesser wage, any
10 employee receiving less than the legal minimum wage or the legal
11 overtime compensation applicable to the employee is entitled to
12 recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest
thereon, reasonable attorneys' fees, and costs of suit.

13 43. California Labor Code § 1198, in pertinent part, provides:

14 The maximum hours of work and the standard conditions of labor
15 fixed by the commission shall be the maximum hours of work and
16 the standard conditions of labor for employees. The employment of
any employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.

17 44. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
18 which an employee is subject to the control of the employer and includes all the time the employee
19 is suffered or permitted to work, whether or not required to do so.

20 45. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
21 employees at least the minimum wage set forth therein for all hours worked, which consist of all
22 hours that an employer has actual or constructive knowledge that employees are working.

23 46. By refusing to compensate Representative Plaintiff, Aggrieved Employees and
24 Class Members for overtime wages earned and/or pay levels meeting the California minimum
25 wage, Defendants violated those California Labor Code provisions cited above as well as the
26 applicable IWC Wage Order and California Code of Regulations provisions.

27 47. Defendants' conduct, as heretofore detailed, represents an underpayment of wages
28 pursuant to California Labor Code §§ 218, *et seq.*, 225.5, 558, 1182.12, 1194.2, 1197, 1197.1 and

1 1198, for which Representative Plaintiff and Class Members seek damages and/or penalties
2 according to proof.

3 48. As a direct and proximate result of Defendants' unlawful conduct, as set forth
4 herein, Representative Plaintiff and Class Members have sustained damages, including a loss of
5 earnings for hours worked (including overtime hours worked) on behalf of Defendants, in an
6 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
7 conduct, as set forth herein, Representative Plaintiff and Class Members are entitled to recover
8 penalties in amounts to be established at trial, as well as interest, liquidated damages, restitution,
9 attorneys' fees and costs, pursuant to statute(s).

10
11 **SECOND CAUSE OF ACTION**
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)
12

13 49. Each and every allegation of the preceding paragraphs is incorporated in this cause
14 of action with the same force and effect as though fully set forth herein.

15 50. At all relevant times, Defendants were aware of and were under a duty to comply
16 with California Labor Code § 226.7 and §512.

17 51. California Labor Code § 226.7 provides:

18 (a) No employer shall require any employee to work during any
19 meal or rest period mandated by an applicable order of the Industrial
Welfare Commission.

20 (b) If an employer fails to provide an employee a meal period or
21 rest period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one
22 additional hour of pay at the employee's regular rate of
23 compensation for each work day that the meal or rest period is not
provided.

24 52. Moreover, California Labor Code § 512(a) provides:

25 An employer may not employ an employee for a work period of
26 more than five hours per day without providing the employee with
a meal period of not less than 30 minutes, except that if the total
27 work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the employer
and employee. An employer may not employ an employee for a
28 work period of more than 10 hours per day without providing the
employee with a second meal period of not less than 30 minutes,

except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

53. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt employees.

54. Section 11 of the applicable IWC Wage Order provides:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

55. Moreover, Section 12 of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

56. Representative Plaintiff, Aggrieved Employees and Class Members were not provided with meal periods of at least 30 minutes for each five-hour work period and/or rest periods of at least net 10 minutes for each four-hour work period, or major fraction thereof. These violations of law were the result of, *inter alia*, Defendants' policies of: (1) not scheduling a meal period as a part of Representative Plaintiff and each Aggrieved Employee's and Class Member's work shift, (2) not allowing these employees to take meal and rest periods until they were released by their supervisors, (3) understaffing in a manner that made it difficult to enjoy timely, full and

uninterrupted meal and/or rest periods, and (4) demanding a technician remain on duty at assigned posts at all times. On many occasions, these non-exempt employees missed meal and rest breaks altogether, remained “on call” during the pendency of otherwise ostensible break periods, were compelled to wait well beyond the fifth hour to take their meal periods, were interrupted during said breaks and/or were required to “piggyback” breaks in a manner that violated California law.

57. By failing to consistently provide full, on-time, uninterrupted and duty-free thirty-minute meal periods and/or net 10-minute rest periods to Representative Plaintiff, Aggrieved Employees and Class Members, Defendants violated the California Labor Code, applicable IWC Wage Order provisions and the applicable California Code of Regulations provisions.

58. Representative Plaintiff is informed and believes and, on that basis, alleges that Defendants have either never paid the one hour of compensation to any Aggrieved Employee or Class Member due to Defendants’ violations of the applicable IWC Wage Order, the applicable California Code of Regulations provisions and provisions of the California Labor Code and/or have insufficiently paid these premiums.

59. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Representative Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed meal and/or rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are entitled to recover penalties in amounts to be established at trial, as well as interest, restitution, attorneys’ fees and costs, pursuant to statute(s).

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

60. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

61. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee’s wages, or

separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

62. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

63. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall. . . [k]eep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... 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.

64. Defendants have failed to provide timely and accurate itemized wage statements to the Representative Plaintiff, Aggrieved Employees and Class Members in accordance with, *inter alia*, California Labor Code § 201-204, 226, 226.3, 226.7, 512, 1174, 1174.5 and 2810.5. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendants accurately reflected actual gross wages earned, net wages earned or the appropriate deductions of Representative Plaintiff, Aggrieved Employees or Class Members.

65. Specifically, Defendants failed to comply with Labor Code section 226(a) as “gross wages earned,” “total hours worked by the employee,” “net wages earned,” and/or “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in the wage statements of Representative Plaintiff, Aggrieved Employees and/or Class Members, to wit: certain hours

1 worked, and certain premiums due as a result of overtime hours worked and/or failures to provide
2 and/or make available meal and rest breaks were omitted.

3 66. As a direct and proximate result of Defendants' unlawful conduct, as set forth
4 herein, Representative Plaintiff and Class Members are entitled to recover penalties in amounts to
5 be established at trial, as well as attorneys' fees and costs, pursuant to statute(s).

6
7 **FOURTH CAUSE OF ACTION**
8 **FAILURE TO PAY WAGES ON TERMINATION**
9 **(California Labor Code § 203)**

10 67. Each and every allegation of the preceding paragraphs is incorporated in this cause
11 of action with the same force and effect as though fully set forth herein.

12 68. California Labor Code § 203 provides that:

13 If an employer willfully fails to pay, without abatement or reduction, in
14 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
15 employee who is discharged or who quits, the wages of the employee shall
continue as a penalty from the due date thereof at the same rate until paid or
until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

16 69. Numerous Aggrieved Employees and Class Members were employed by
17 Defendants during the class period and were, thereafter, terminated or resigned from their
18 positions, yet they were not paid all premium (e.g., overtime, meal/rest period violations) wages
19 due upon said termination or within 72 hours of said resignation of employment therefrom. Said
20 non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

21 70. More than 30 days have elapsed since certain Aggrieved Employees and Class
22 Members were involuntarily terminated or voluntarily resigned from Defendants' employ.
23 As a direct and proximate result of Defendants' willful conduct in this regard, affected Class
24 Members are entitled to recover "waiting time" penalties of up to thirty days' wages pursuant to
25 California Labor Code § 203 and 256 in an amount to be established at trial, as well as attorneys'
26 fees and costs, pursuant to statute(s).

FIFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)

71. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

72. Representative Plaintiff brings this cause of action seeking equitable and statutory relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful and/or fraudulent business practices described herein.

73. Defendants' knowing conduct, as alleged herein, constitutes an unlawful and/or fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208. Specifically, Defendants conducted business activities while failing to comply with the legal mandates cited herein.

74. Defendants have clearly established a policy of accepting a certain amount of collateral damage, as represented, *inter alia*, by the damages to the Representative Plaintiff and Class Members herein alleged, as incidental to Defendants' business operations, rather than accept the alternative costs of full compliance with fair, lawful and honest business practices, ordinarily borne by their responsible competitors and as set forth in legislation and the judicial record.

SIXTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT CLAIM
(California Labor Code §§ 2699, et seq.)

75. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

76. California Labor Code § 2699(a) provides, in pertinent part:

Notwithstanding any other provision of the law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an

Aggrieved Employee on behalf of themselves or herself and other current or former employees. . .

77. Representative Plaintiff and each and every other non-exempt employee working in California for Defendants within one year of the exhaustion of the administrative prerequisites under the California Private Attorneys General Act, as described herein, are “Aggrieved Employees,” as defined by California Labor Code § 2699(c), because he/they was/were employed by Defendants and were among the employees against whom the violations of law articulated in this Complaint were committed.

78. These Aggrieved Employees share each and every one of the factual underpinnings and predicate violations articulated in the preceding paragraphs of this Complaint with Class Members and the Representative Plaintiff.

79. As set forth above, Representative Plaintiff has met all of the requirements set forth in California Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of (and/or recovery on behalf of the State of California under) California’s Private Attorneys General Act.

80. Representative Plaintiff Jesse Cruz brings this action on direct and/or indirect behalf of all Aggrieved Employees, alleging violations of the California Labor Code provisions cited in the preceding paragraphs.

81. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Representative Plaintiff, Aggrieved Employees and the State of California are entitled to recover penalties as provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs and attorneys’ fees, pursuant to statute(s).

RELIEF SOUGHT

WHEREFORE, Representative Plaintiff, individually, in a qui tam representative capacity and/or on behalf of the proposed Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

1 1. That the Court declare, adjudge and decree that this action is a proper class action
2 and certify the proposed Class and/or any other appropriate subclasses under California Code of
3 Civil Procedure § 382;

4 2. That the Court declare, adjudge and decree that Defendants willfully violated their
5 legal duties to pay all wages due under the California Labor Code, the applicable California
6 Industrial Welfare Commission Wage Order and the applicable California Code of Regulations
7 provisions;

8 3. That the Court make an award to the Representative Plaintiff and Class Members
9 of one hour of pay at each employee's regular rate of compensation for each workday that a meal
10 period was not adequately provided;

11 4. That the Court make an award to the Representative Plaintiff and Class Members
12 of one hour of pay at each employee's regular rate of compensation for each workday that a rest
13 period was not adequately authorized and permitted;

14 5. That the Court make an award to the Representative Plaintiff and Class Members
15 of penalties, pursuant to California Labor Code §§ 203, 226, 558 and 1174.5 and/or liquidated
16 damages pursuant to § 1194.2, in amounts to be proven at trial;

17 6. That the Court order Defendants to pay restitution to the Representative Plaintiff
18 and Class Members due to Defendants' unlawful activities, pursuant to California Business and
19 Professions Code §§ 17200-17208;

20 7. That the Court further enjoin Defendants, ordering them to cease and desist from
21 unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

22 8. For interest on the amount of any and all economic losses, at the prevailing legal
23 rate(s);

24 9. That the Court declare, adjudge and decree that this action is a proper representative
25 action and that Representative Plaintiff has standing to pursue it, pursuant to California Labor
26 Code § 2699, *et seq.*;

27 10. That the Court make an award of civil penalties to Aggrieved Employees and the
28 State of California, pursuant to California Labor Code § 2699, *et seq.*;

1 11. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure §
2 1021.5, and Labor Code §§ 218.5 and/or 2699, *et seq.*;

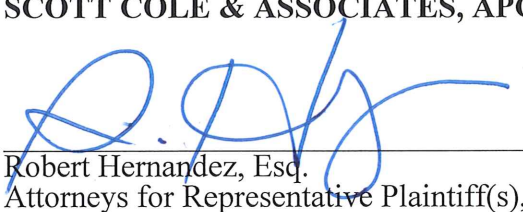
3 12. For costs of suit and any and all such other relief as the Court deems just and proper;
4 and

5 13. For all other Orders, findings and determinations identified and sought in this
6 Complaint.

7
8
9 Dated: April 30, 2021

SCOTT COLE & ASSOCIATES, APC

10
11 By:


Robert Hernandez, Esq.
Attorneys for Representative Plaintiff(s), *et al.*

PROOF OF SERVICE

I am over 18 years of age, not a party to the above-captioned action, and am employed by the law firm of Scott Cole & Associates, APC, 555 12th St., Suite 1725, Oakland, California 94607.

On this date, I served a copy of:

FIRST AMENDED COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF, PENALTIES AND RESTITUTION

☒	By depositing the document(s) with the U.S. Postal Service, with postage fully prepaid, addressed as indicated below, in the ordinary course of business.
☐	By facsimile transmission to the fax number(s) below, before 5:00 p.m. PST.
☐	By placing the document(s) in a sealed Federal Express envelope, affixing a pre-paid air bill and delivering it to a Federal Express agent.
☐	By personal delivery.
☒	By e-mail transmission to the e-mail address(es) below.
☐	By electronic filing using the CM/ECF System which will send a Notice of Electronic Filing to the email address(es) listed in the Electronic Mail Notice List.
☐	By uploading the document(s) to the third-party document management/service company, court-approved for purposes of this litigation.
☒	By electronic submission to the Labor and Workforce Development Agency.

on the following person(s):

Jason E. Barsanti, Esq.
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I declare under penalty of perjury under the laws of the United States and the State of California the foregoing is true and correct. Executed in Oakland, California on June 3, 2021.



Nicole Randle