

Justin Lo (SBN: 280102)
justin@caworklawyer.com
Berkeh Alemzadeh (SBN: 324834)
beyonca@caworklawyer.com
WORK LAWYERS PC
22939 Hawthorne Blvd., Suite 202
Torrance, CA 90505
Telephone: (424) 355-8535
Facsimile: (213) 784-0032

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JUN 07 2021

BY *Sylvia Guajardo*
SYLVIA GUAJARDO, DEPUTY

Attorneys for Plaintiff SHAWN FITZPATRICK, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY SAN BERNARDINO

SHAWN FITZPATRICK, on behalf of
himself and all others aggrieved
employees,

Plaintiff,

v.

CONCORD FOODS, INC., a California
Corporation; and DOES 1- 50, Inclusive,

Defendant,

Case No.:

CIV SB 2116303

REPRESENTATIVE ACTION

BY **FAX**

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Keep Accurate Payroll Records and Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment; and
6. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

1 Plaintiff SHAWN FITZPATRICK (“Plaintiff” or “Mr. Fitzpatrick”) as a representative of
2 the State of California and the Labor and Workforce Development Agency (“LWDA”), and on
3 behalf of himself and other current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
6 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
7 Defendant CONCORD FOODS INC. (“CONCORD FOODS” or “Defendant”). The term
8 “Relevant Time Period” or “Time Period” is defined as one (1) year plus sixty-five (65) days prior
9 to the filing of the complaint. Plaintiff reserves the right to amend this complaint to reflect a
10 different “Time Period” as further discovery is conducted.

11 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
12 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
13 (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to provide
14 rest periods or premium compensation in lieu thereof; (4) failure to keep accurate payroll records
15 and provide accurate itemized wage statements; (5) failure to pay wages due upon termination of
16 employment; and (6) failure to indemnify for expenditures or losses in discharge of duties.

17 3. At all relevant times herein, Defendants have consistently maintained and
18 enforced the following unlawful policies and practices against Plaintiff:

- 19 (a) Willfully refusing to pay all hours worked, including both regular and overtime
20 wages;
- 21 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
22 lieu thereof;
- 23 (c) Willfully refusing to permit rest periods or providing compensation in lieu
24 thereof;
- 25 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
26 wages;
- 27 (e) Willfully refusing to pay all wages due upon separation of employment; and
28 (f) Willfully refusing to pay for expenditures or losses in the discharge of their duties.

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5. Venue is proper in the County of San Bernardino, because the Defendant maintains its location and transact business in this county, the obligations and liability arise in this county, and work performed by Plaintiff and Aggrieved Employees that form the subject of this action occurred in this county.

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

Plaintiff

1 **Defendants**

2 9. Plaintiff is informed and believes, and based thereon alleges that, Concord Foods
3 is a California corporation, operating facilities throughout California and is and/or was the
4 employer of the Plaintiff and Aggrieved Employees during the Relevant Time Period. During
5 the Relevant Time Period, Defendant employed Plaintiff and similarly situated persons and
6 failed to pay Plaintiff and Aggrieved Employees for all hours worked as a result of working off
7 the clock before or after the start of their shifts, failing to pay minimum and overtime wages,
8 failing to provide meal periods or pay a meal period penalty in lieu of, failed to provide rest
9 periods or pay a rest period penalty in lieu of; failed to reimburse employees for necessary
10 business expenditures, failed to pay all wages upon end of employment, and failed to provide
11 accurate and itemized wage statements. On information and belief, and based thereon alleges
12 that Defendants are conducting business in good standing in California.

13 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
14 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
15 inclusive, but on information and belief alleges that said Defendants are legally responsible for
16 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
17 capacities of the DOE Defendant when ascertained.

18 11. Plaintiff is informed believes, and thereon alleges, that each Defendants acted in
19 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
20 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
21 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
22 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
23 joint employers and conspire with one another to increase profits by engaging in the conduct
24 described in this complaint.

25 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
26 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
27 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
28 below was acting, at least in part, within the course and scope of that authority as such agent,

1 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
2 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
3 are legally attributable to the other Defendants.

4 **PAGA ADMINISTRATIVE PREREQUISITE**

5 13. By this complaint, Plaintiff brings this case as a representative action seeking
6 penalties for the State of California in a representative capacity, as provided by PAGA, labor
7 Code section 2698 et seq., to the extent permitted by law, as an aggrieved employee who was
8 employed by Defendant and subject to alleged violations set forth in Labor Code section 2699.5.
9 Plaintiffs and other aggrieved employees are current and former employees of Defendant dating
10 from three hundred sixty-five (365) days from the submission of the written notice to the LWDA
11 and Defendant to the resolution of this matter. Plaintiffs specifically alleged the following in their
12 notice to the Labor and Workforce Development Agency (“LWDA”) and the employer violations
13 of Labor Code sections 201, 202, 203, 204, 206, 210, 221, 226, 226.7, 510, 512, 1174, 1174.5,
14 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2810.5, as well as Industrial Welfare
15 Commission (IWC) Wage Order No. 1-2001 (“Wage Order 1”).

16 14. Under Labor Code section 2699.3 subdivision(a), a Plaintiff may bring a cause of
17 action under PAGA only after giving notice to the LWDA and the employer of the Labor Code
18 section alleged to have been violated, and after sixty-five (65) days have passed without notice.
19 Prior to filing this complaint, on March 10, 2021, Plaintiff gave written notice by certified
20 electronic mail to the LWDA and to Defendants of the specified provisions alleged to have been
21 violated, including the facts and theories to support the alleged violation as required by Labor
22 Code section 2699.3. A true and correct copy of Plaintiff’s original letter sent to the LWDA on
23 March 10, 2021, is attached hereto as “Exhibit A.”

24 15. More than sixty-five (65) days have passed since Plaintiff submitted his March 10,
25 2021, notice to the LWDA and Defendants of the specific alleged Labor Code violations and the
26 LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.
27 Plaintiff further has received no notice of Defendants’ intent to cure any of the alleged violations.
28 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard

1 to his March 10, 2021, PAGA notice.

2 **FACTUAL ALLEGATIONS**

3 16. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny its
4 employees the benefits due under California's wage and hour laws for work performed in
5 California. Defendants wrongfully refused to pay Plaintiff and Aggrieved Employees regular
6 wages, overtime compensation, business expense reimbursements, and other statutory benefits
7 mandated by California.

8 17. Throughout the Relevant Time Period, Defendants employed Plaintiff and
9 Aggrieved Employees in non-exempt positions throughout its California locations. Accordingly,
10 these positions remain non-exempt from California's wage and hour laws, yet Defendant failed
11 to pay overtime, provide meal and rest breaks and otherwise pay all wages due to these non-
12 exempt employees as required by law.

13 18. During the Relevant Time Period, Defendant failed to compensate Plaintiff and
14 Aggrieved Employees legally mandated minimum wages and overtime rate for all work
15 performed during their shifts in violation of the Labor Code and the Labor Code and Industrial
16 Welfare Commission ("IWC") Wage Orders. During the course of Plaintiff's employment with
17 Defendants, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours
18 per day, but were routinely not paid for all hours worked. Plaintiff and Aggrieved Employees
19 primarily performed non-exempt work in excess of the maximum regular rate hours set by the
20 IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiff
21 and Aggrieved Employees to overtime compensation at time and a half rate, and when
22 applicable, double time rates as set forth by the applicable Wage Orders, regulations and/or
23 statutes. Further, Plaintiff and Aggrieved Employees regularly worked through meal and rest
24 breaks, and were not paid the legally mandated regular or overtime wages for the hours they
25 worked.

26 19. During the Relevant Time Period, Defendants, and each of them failed and/or
27 refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner so as to
28 reasonably provide meal and/or rest breaks and/or shift relief for Plaintiff and Aggrieved

1 Employees, thereby causing members of the Aggrieved Employees to work without being given
2 paid ten (10) minute rest periods for every four (4) hours or major fraction thereof worked and
3 without being given a thirty (30) minute meal period for shifts of at least five (5) hours and second
4 thirty (30) minute meal periods for shifts of at least ten (10) hours during which Aggrieved
5 Employees were relieved of all duties and free to leave the premises. Defendants further failed
6 and/or refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner and/or
7 provide shift relief for Plaintiff and Aggrieved Employees so as to reasonably ensure meal and/or
8 rest breaks were taken within the required statutory time frame as required by law. Furthermore,
9 Defendants failed and/or refused to pay any Aggrieved Employee one (1) hour's pay at the
10 employees' regular rate of pay as premium compensation for failure to provide rest and/or meal
11 periods or to providing such rest and/or meal periods within the statutory time frame as a result
12 of their scheduling policy.

13 20. As a result of Defendants' aforementioned failure to pay all wages to Plaintiff and
14 Aggrieved Employees, due to its unfair rounding practices among other things, Defendants failed
15 to maintain accurate payroll records showing the accurate number of hours worked, accurate rate
16 of pay for each hour worked, premium wages earned, and accurate gross and net wages paid in
17 violation of Labor Code sections 226, 1174, and 1174.5.

18 22. Plaintiff and Aggrieved Employees who ended their employment during the Relevant
19 Time Period, were not paid the above due compensation or premium compensation timely upon
20 the termination of their employment as required by Labor Code.

21 23. Defendant further failed to reimburse Plaintiff and Aggrieved Employees for any
22 necessary business expenses. Defendants had a policy and/or practice of failing to reimburse
23 Plaintiff and Aggrieved Employees for incurring necessary business expenditures as required by
24 Labor Code sections 2802. Specifically, Defendants required Plaintiff and Aggrieved Employees
25 to maintain their uniforms bearing Defendant's logo, that were required to be worn while working
26 at Defendant's facilities and/or making deliveries. Defendants failed to reimburse Plaintiff and
27 Aggrieved Employees for the cost or time spent washing and maintaining Defendant's uniforms
28 in violation of the Labor Code and the IWC Wage Orders.

24. During the Relevant Time Period, Defendant and each of them, required Plaintiff and Aggrieved Employees to work without lawful compensation, in violation of the California Labor Code, applicable Wage Orders, regulations and statutes, and Defendants: (1) willfully ailed and refused, and continue to fail and refuse to pay compensation for all hours worked for the Plaintiff and Aggrieved Employees: and (2) willfully failed and refused, and continue to fail and refuse to pay due and owing wages promptly upon termination of employment to Plaintiff and Aggrieved Employees.

FIRST CAUSE OF ACTION

VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND OVERTIME

(Labor Code Sections 226.7 and 512)

(Plaintiff Against All Defendants)

24. Plaintiffs reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

23. Plaintiffs and Aggrieved Employees regularly worked over eight (8) hours per day and forty (40) hours per week. Defendants failed to pay Plaintiffs and Aggrieved Employees minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendants. Defendants failed to pay Plaintiffs and Aggrieved Employees overtime premium for hours worked in excess of eight (8) hours per day and forty (40) hours per week for work performed for Defendants. Defendants failed to schedule Plaintiff and Aggrieved Employees in such a manner that allowed Plaintiffs and Aggrieved Employees to be relieved of their shift immediately, thereby causing Plaintiffs and Aggrieved Employees to work in excess of eight (8) hours per day and/or forty (40) hours per week. Furthermore, Defendant failed to include all remuneration for purposes of calculating Plaintiff and Aggrieved Employees' overtime.

24. Defendants willfully violated the Labor Code by failing to pay Plaintiff and Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and Aggrieved Employees were denied proper wages as a result of Defendants' policy of having

1 Plaintiff and Aggrieved Employees work after clocking out for their meal periods and failing to
2 compensate Plaintiff and Aggrieved Employees for all hours worked at the proper rate of pay
3 pursuant to Labor Code section 510.

4 25. Moreover, on information and belief, during the Relevant time Period, Defendant
5 implemented an unlawful rounding policy that failed to compensate Plaintiff and Aggrieved
6 Employees for all hours worked, in violation of the applicable Wage Orders, regulations, and
7 statutes. Defendant's rounding policy illegally resulted in favor of Defendant by decreasing the
8 amount of compensation paid to Plaintiff and Aggrieved Employees.

9 26. A valid rounding policy must be applied consistently and "favors neither
10 overpayment nor underpayment." (See e.g. *See's Candy Shops, Inc. v. Superior Court*, (2012) 210
11 Cal.App.4th 889.) An employer's rounding policy violates DOL regulations when it
12 "systematically undercompensates employees, such as...polic[ies] [that] only round down." (*Id.*)
13 Defendant's "rounding" policy fails to meet the "fairness" test as set out by the appellate court that
14 provided a "rounding" legality test. Under *See's*, the rule in California is that an employer is
15 entitled to use the nearest-tenth rounding policy if the rounding policy is fair and neutral on its
16 face and "it is used in such a manner that it will not result, over a period of time, in failure to
17 compensate the employees properly for all the time they have actually worked." (*See's*, 210
18 Cal.App.4th at 907.)

19 27. On information and belief, Plaintiff and Aggrieved Employees were habitually
20 undercompensated for their time. Contrary to federal law (29 C.F.R. § 785.48) which permits
21 rounding time to the nearest five (5) minutes, or one tenth or quarter of an hour, Defendant here
22 had no such distinguishable pattern of rounding employees' actual time worked. Whether
23 employees clocked in ten (10) minutes early or clocked out seven (7) minutes late, they were paid
24 for eight (8) hours. Hence, Defendant routinely rounded to the nearest hour for its own benefit.

25 28. California statutes and regulations do not specifically address rounding, but Labor
26 Code sections 510 and 1194 clearly mandate employees must be paid the legally required
27 compensation for all time worked, including overtime. Plaintiff's preliminary analysis
28 demonstrates that the Defendant's "rounding" policy "systematically undercompensate[s]

employees,” (*Id.*, citing *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1126-1127 (C.D. Cal. 2011) because it is applied in concert with Defendant’s “attendance, punctuality, and tardiness” policies such that it is set up to result in Plaintiff and Aggrieved Employees being underpaid for the hours worked and provides Defendants’ free labor.) Instead, Defendant consistently rounded the time employees worked downward to evade their overtime obligations.

29. Since the LWDA has not indicated that it will be investigating more than sixty-five (65) days since Plaintiff provided notice, and because Defendants took no corrective action to remedy the allegations set forth above, Plaintiffs, as representatives of the State of California, seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

30. Plaintiff is informed and believes that Defendants have violated, and continues to violate, provisions of the Labor Code and applicable Wage Orders related to the payment of minimum wages and overtime.

31. Plaintiff, as representative of the State of California, seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA.

32. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

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SECOND CAUSE OF ACTION
VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR
PREMIUM COMPENSATION IN LIEU THEREOF
(Labor Code Sections 226.7 and 512)
(Plaintiff against All Defendants)

33. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

34. Labor Code sections 226.7 and 512 and IWC Wage Order 1-2001, Sect. 11 provides that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

35. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, 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 in accordance with this section. Plaintiffs allege that Defendants failed to provide legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not relieving employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods.

36. Industrial Welfare Commission (IWC) Wage Order No. 1-2001 section 11(A) states, "Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

37. The burden to prove that a meal or rest period violation has occurred normally rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (238 Cal. App. 4th 1138,

1 1159-60 (2015)), where an employer fails to keep accurate records of meal and rest periods, a
2 presumption of meal and rest period violations is created, shifting the burden to the employer to
3 prove that meal and rest period violations did not occur.

4 38. Defendants failed to schedule non-exempt employees in an adequately
5 overlapping manner so as to reasonably ensure Plaintiff and Aggrieved Employees could take
6 and/or receive such meal periods within the statutory timeframe. Further, Defendants obligated
7 Plaintiff and Aggrieved Employees to work through meal periods while off-the-clock.
8 Defendants denied Plaintiffs and Aggrieved Employees duty-free meal periods, as a result,
9 Plaintiff and Aggrieved Employees were often forced to forego meal periods and/or work during
10 their meal periods. In so doing, Defendants have intentionally and improperly denied meal periods
11 to Plaintiff and Aggrieved Employees in violation of Labor Code sections 226.7 and 512 and
12 other regulations and statutes.

13 39. Defendants failed to keep accurate records of the meal periods taken by Plaintiff
14 and Aggrieved Employees.

15 40. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
16 than five (5) hours in a workday.

17 41. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
18 worked more than ten (10) hours in a workday.

19 42. At all times relevant hereto, Defendants, failed offer or to schedule non-exempt
20 positions in a manner so as to reasonably provide meal and/or work free meal period as required
21 by Labor Code sections 226.7 and 512.

22 43. Defendants' failure to schedule Plaintiff and Aggrieved Employees in such a way
23 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
24 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
25 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
26 ascertained according to proof at trial.

27 44. Further, Defendants' failure to maintain accurate records of the meal periods taken
28 by Plaintiffs and Aggrieved Employees creates a presumption of the violations having occurred

1 and shifts the burden to Defendants to prove they did not occur.

2 45. Plaintiff individually, and the Aggrieved Employees, request recovery of any civil
3 penalties against Defendants, and each of them, in a sum as provided by the Labor Code.

4 46. Since the LWDA has not indicated that it will be investigating and sixty-five (65)
5 days have passed since Plaintiff mailed his letter, and because Defendant took no corrective action
6 to remedy the allegations set forth above, Plaintiff, as representatives of the people of the State of
7 California, seek any and all penalties otherwise capable of being collected by the Labor
8 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
9 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
10 section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 226.7
11 and 512.

12 47. Plaintiff are informed and believes that Defendants have violated and continues to
13 violate provisions of the Labor Code and applicable Wage orders related to the payment of
14 minimum wages, including overtime.

15 48. Plaintiff, as representatives of the State of California, seek to recover any and all
16 penalties for each and every violation shown to exist or to have occurred during the Relevant
17 Time Period, in an amount according to proof, as to those penalties that are otherwise only
18 available to public agency enforcement actions. Funds recovered will be distributed in accordance
19 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
20 reimbursed to the LWDA.

21 49. Additionally, Plaintiffs and Aggrieved Employees are entitled to attorneys' fees
22 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
25 **PREMIUM COMPENSATION IN LIEU THEREOF**

26 **(Labor Code Sections 226.7 and 512)**

27 **(Plaintiff against All Defendants)**

28 50. Plaintiff and Aggrieved Employees reallege and incorporate by reference the

preceding paragraphs of this complaint as if fully set forth herein.

51. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

52. Labor Code section 226.7, subdivision (b), provides that if an employer fails to provide an employee rest periods in accordance with this section, 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.

53. Defendants, and each of them, failed and or refused to implement a relief system by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest periods. Defendants denied Plaintiff and Aggrieved Employees duty free rest periods by interrupting Plaintiff and Aggrieved Employees' rest periods. By and through their actions, Defendants intentionally and improperly denied duty free rest periods to the Plaintiff and Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

54. Furthermore, Defendants failed to provide Plaintiff and Aggrieved Employees with duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all together in violation of Labor Code section 226.7 and 512.

55. Defendants failed to keep accurate records of the rest periods taken by Plaintiff and Aggrieved Employees.

56. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked more than four (4) hours in a workday.

57. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiff and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and Aggrieved Employees have suffered, and will continue to suffer damages.

58. Plaintiffs, by virtue of their employment with Defendants, and Defendants' failure to provide Plaintiffs and Aggrieved Employees with rest breaks, requiring Plaintiffs and Aggrieved Employees to work through their rest periods without receiving compensation in lieu thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiffs have satisfied all prerequisites to serve as a representative of the general public to enforce

1 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

2 59. Plaintiff individually, and the Aggrieved Employees, as a representative of the
3 State of California, seek any and all penalties otherwise capable of being collected by the Labor
4 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
5 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
6 alleged violation of the following provisions: 226.7 and 512.

7 60. Plaintiff, as representative of the State of California, seek to recover any and all
8 penalties for each and every violation shown to exist or to have occurred during the Relevant
9 Time Period, in an amount according to proof, as to those penalties that are otherwise only
10 available to public agency enforcement actions. Funds recovered will be distributed in accordance
11 with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being
12 reimbursed to the LWDA.

13 61. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
14 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

15 **FOURTH CAUSE OF ACTION**

16 **VIOLATION OF PAGA FOR FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
17 **AND TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

18 **(Labor Code Sections 1174 and 226, subdivision (A), (E))**

19 **(Plaintiff against All Defendants)**

20 62. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
21 preceding paragraphs of this complaint as if fully set forth herein.

22 63. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
23 location in California or at the plant or establishment at which the employees are employed,
24 payroll records showing the hours worked daily, and the wages paid to each employee. Plaintiff
25 is informed and believes, based thereon alleges, that Defendants willfully failed to make or keep
26 accurate records for Plaintiff and similarly-aggrieved employees.

27 64. Labor Code section 226, subdivision (a), states in pertinent part that, "every
28 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 accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a 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 corresponding number of hours worked at each hourly rate by the employee..." (Lab. Code, § 226.)

65. Defendants knowingly and intentionally failed to provide timely and accurate itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code section 226, subdivision (a), by failing to record the accurate number of hours worked, the accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved Employees.

66. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

67. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties recovered being reimbursed to the LWDA.

68. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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2 **FIFTH CAUSE OF ACTION**

3 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

4 **TERMINATION OF EMPLOYMENT**

5 **(Labor Code Sections 201 and 203)**

6 **(Plaintiff against All Defendants)**

7 69. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
8 preceding paragraphs of this complaint as if fully set forth herein.

9 70. Plaintiff is informed and believes that certain members of the Aggrieved
10 Employees who ended their employment with Defendants during the Relevant Time Period, were
11 entitled to be promptly paid both minimum wage and lawful overtime compensation and other
12 premiums, as required by Labor Code sections 201 and 203.

13 71. Defendants refused and/or failed to promptly compensate Aggrieved Employees
14 wages owed as a result of Defendants' failure to provide meal and/or rest periods as well as pay
15 both minimum and overtime compensation owed for work performed for Defendant.

16 72. Plaintiff, by virtue of his employment with Defendants, is an aggrieved employee
17 with standing to bring an action under the PAGA and has suffered injury as to one or more
18 violations committed by Defendants. Plaintiff has satisfied all prerequisites to serve as a
19 representative of the general public to enforce California's labor laws, and the penalty provisions
20 identified in Labor Code section 2699.5.

21 73. Plaintiff, as a representative of the people of the State of California, will seek any
22 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
23 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
24 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
25 201-203, 226, 226.7, 510, 512, 1174, and 1194.

26 74. Plaintiff, as a personal representative of the general public, will and does seek to
27 recover any and all penalties for each and every violation shown to exist or to have occurred
28 during the Relevant Time Period, in an amount according to proof, as to those penalties that are

otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy five percent (75%) of the penalties recovered being reimbursed to the LWDA.

75. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

SIXTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO INDEMNIFY FOR EXPENDITURES OR LOSSES IN DISCHARGE OF DUTIES

(Labor Code Section 2802)

(Plaintiff against All Defendants)

76. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

77. Labor Code section 2802 states, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties..."

78. Plaintiff and the Aggrieved Employees were not reimbursed by Defendant for necessary expenditures as a direct consequence of the discharge of their duties.

79. Defendants knowingly, willingly and intentionally attempted to offset the cost of doing business on the Plaintiff and Aggrieved Employees.

80. Defendants had a policy and practice of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures. Specifically, Defendant required Plaintiff and Aggrieved Employees to use their personal cellphones to, without limitation, communicate with supervisors, take photos and/or videos of merchandise prior to deliveries, as well as for navigation purposes. However, despite the foregoing, Defendant failed to reimburse Plaintiff and Aggrieved Employees with a reasonable percentage of their cellular phone bills. Moreover, Defendant required Plaintiff and Aggrieved Employees to wear uniforms bearing Defendant's logo, while working at Defendants facilities and/or when making deliveries.

1 However, despite the foregoing, Plaintiff and Aggrieved Employees were forced to bear the costs
2 and expenses associated with maintaining their own uniform, and were not reimbursed by
3 Defendant for the same.

4 81. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
5 "necessary expenditures or losses" which shall include all reasonable costs, including, but not
6 limited to, attorney's fees and interest.

7 82. Plaintiff by virtue of his employment with Defendants and the Defendants' policy
8 of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendants' cost of
9 doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary
10 expenditures, is an aggrieved employee with standing to bring an action under the PAGA.
11 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce
12 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

13 83. Plaintiff, as a representative of the people of the State of California, will seek any
14 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
15 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
16 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
17 201-203, 226, 226.7, 510, 512, 1174, and 1194.

18 84. Plaintiff, as a personal representative of the general public, will and does seek to
19 recover any and all penalties for each and every violation shown to exist or to have occurred
20 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
21 otherwise only available to public agency enforcement actions. Funds recovered will be
22 distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties
23 recovered being reimbursed to the LWDA.

24 85. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
25 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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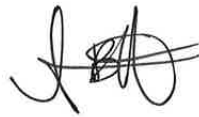
PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Aggrieved Employees pray for judgment as follows:

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute, provided by PAGA;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

Dated: June 3, 2021

WORK LAWYERS PC



By: _____

Justin Lo, Esq.
Berkeh Alemzadeh, Esq.
Attorneys for Plaintiff SHAWN FITZPATRICK