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Case #21CV376481
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

MARTIN ASECNCIO ROJAS, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

PULMUONE FOODS USA, INC., an Iowa
corporation; PULMUONE U.S.A., INC., a
California corporation; NASOYA FOODS
USA, LLC, a Delaware limited liability
company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21CV376481

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California

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- Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Martin Asencio Rojas, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this county,
5 and employed Plaintiff in this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Martin Asencio Rojas is a resident of Hollister, in San Benito County,
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
10 approximately April 2012 to November 2020. Over the course of his employment, Plaintiff
11 worked in various positions, including: Maintenance Mechanic, HVAC Mechanic, Senior
12 Utilities Refrigeration Specialist, and finally, Master Mechanic. Plaintiff worked for
13 Defendants at their location in Gilroy, California. During his employment, Plaintiff typically
14 worked eight (8) hours or more per day, and five (5) or more days per week. Plaintiff's primary
15 job duties included, without limitation, troubleshooting and repairing machines, maintaining a
16 clean work area, and maintaining the mechanic shop.

17 5. PULMUONE FOODS USA, INC. was and is, upon information and belief, an
18 Iowa corporation, and at all times hereinafter mentioned, an employer whose employees are
19 engaged throughout this county, the State of California, or the various states of the United States
20 of America.

21 6. PULMUONE U.S.A., INC. was and is, upon information and belief, a California
22 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
23 throughout this county, the State of California, or the various states of the United States of
24 America.

25 7. NASOYA FOODS USA, LLC was and is, upon information and belief, a
26 Delaware limited liability company, and at all times hereinafter mentioned, an employer whose
27 employees are engaged throughout this county, the State of California, or the various states of
28 the United States of America.

1 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
2 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
3 complaint and serve such fictitiously named Defendants once their names and capacities
4 become known.

5 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
6 were the partners, agents, owners, or managers of PULMUONE FOODS USA, INC.,
7 PULMUONE U.S.A., INC., and NASOYA FOODS USA, LLC at all relevant times.

8 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
9 acts and omissions alleged herein was performed by, or is attributable to, PULMUONE FOODS
10 USA, INC.; PULMUONE U.S.A., INC.; NASOYA FOODS USA, LLC; and/or DOES 1
11 through 10 (collectively, “Defendants” or “PULMUONE”), each acting as the agent, employee,
12 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
13 and was acting within the course and scope of such agency, employment, joint venture, or
14 concerted activity with legal authority to act on the others’ behalf. The acts of any and all
15 Defendants were in accordance with, and represent, the official policy of Defendants.

16 11. At all relevant times, Defendants, and each of them, ratified each and every act
17 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
18 and abetted the acts and omissions of each and all the other Defendants in proximately causing
19 the damages herein alleged.

20 12. Plaintiff is informed and believes, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 13. Under California law, Defendants are jointly and severally liable as employers
24 for the violations alleged herein because they have each exercised sufficient control over the
25 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
26 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
27 their work schedule and/or conditions of employment, determined their rate of pay, and
28 maintained their employment records. Defendants suffered or permitted Plaintiff and class

1 members to work and/or “engaged” Plaintiff and class members so as to create a common-law
2 employment relationship. As joint employers of Plaintiff and class members, Defendants are
3 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
4 class members under the law.

5 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
6 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
7 members because Defendants have:

- 8 (a) jointly exercised meaningful control over the work performed by Plaintiff
9 and class members;
- 10 (b) jointly exercised meaningful control over Plaintiff’s and class members’
11 wages, hours, and working conditions, including the quantity, quality
12 standards, speed, scheduling, and operative details of the tasks performed
13 by Plaintiff and class members;
- 14 (c) jointly required that Plaintiff and class members perform work which is
15 an integral part of Defendants’ businesses; and
- 16 (d) jointly exercised control over Plaintiff and class members as a matter of
17 economic reality in that Plaintiff and class members were dependent on
18 Defendants, who shared the power to set the wages of Plaintiff and class
19 members and determined their working conditions, and who jointly
20 reaped the benefits from the underpayment of their wages and
21 noncompliance with other statutory provisions governing their
22 employment.

23 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
24 there has existed a unity of interest and ownership between Defendants such that any
25 individuality and separateness between the entities has ceased.

26 16. PULMUONE FOODS USA, INC.; PULMUONE U.S.A., INC.; NASOYA
27 FOODS USA, LLC; and/or DOES 1 through 10 are therefore alter egos of each other.

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1 17. Adherence to the fiction of the separate existence of Defendants would permit an
2 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
3 liability for the wrongful acts committed by them under the name PULMUONE.

4 18. Plaintiff further alleges, upon information and belief, that Defendants
5 PULMUONE FOODS USA, INC.; PULMUONE U.S.A., INC.; and NASOYA FOODS USA,
6 LLC are alter egos of each other for the following reasons:

7 (a) On the California Secretary of State's website
8 (<https://businesssearch.sos.ca.gov/>), PULMUONE FOODS USA, INC.;
9 PULMUONE U.S.A., INC.; and NASOYA FOODS USA, LLC share the
10 same entity address and mailing address, "2315 MOORE AVENUE,
11 FULLERTON, CALIFORNIA 92833;"

12 (b) According to Defendants' most recent "Statement of Information" forms
13 filed with the California Secretary of State, PULMUONE FOODS USA,
14 INC.; PULMUONE U.S.A., INC.; and NASOYA FOODS USA, LLC
15 share the same officers, directors, and/or registered agents, including, but
16 not limited to:

17 i. Kil Su Cho, who serves as Secretary for PULMUONE
18 FOODS USA, INC. and PULMUONE U.S.A., INC., and as
19 Manager of NASOYA FOODS USA, LLC; and

20 ii. Esther Lee, who serves as a Chief Financial Officer for
21 PULMUONE FOODS USA, INC.; PULMUONE U.S.A.,
22 INC.; and NASOYA FOODS USA, LLC, and serves as
23 registered agent for PULMUONE FOODS USA, INC. and
24 PULMUONE U.S.A., INC.

25 (c) On information and belief, PULMUONE FOODS USA, INC.,
26 PULMUONE U.S.A., INC., and NASOYA FOODS USA, LLC utilize
27 the same standardized employment forms and issue the same employment
28 policies.

1 **GENERAL ALLEGATIONS**

2 19. Defendants are a leader in providing fresh, natural, and organic food products
3 that feature globally inspired foods and plant-based protein, with brands that include Nasoya,
4 Wildwood, Emerald Valley Kitchen, Monterey Gourmet Foods, and Cibo Naturals. Defendants
5 operate food processing and manufacturing facilities in Fullerton, California and Gilroy,
6 California. Upon information and belief, Defendants maintain a single, centralized Human
7 Resources (“HR”) department at their company headquarters in Fullerton, California, which is
8 responsible for the recruiting and hiring of new employees, and communicating and
9 implementing Defendants’ company-wide policies, including timekeeping policies and meal
10 and rest period policies, to employees throughout California.

11 20. In particular, Plaintiff and class members, on information and belief, received
12 the same standardized documents and/or written policies. Upon information and belief, the
13 usage of standardized documents and/or written policies, including new-hire documents,
14 indicate that Defendants dictated policies at the corporate level and implemented them
15 company-wide, regardless of their employees’ assigned locations or positions. Upon
16 information and belief, Defendants set forth uniform policies and procedures in several
17 documents provided at an employee’s time of hire.

18 21. Upon information and belief, Defendants maintain a centralized Payroll
19 department at their company headquarters in Fullerton, California, which processes payroll for
20 all non-exempt, hourly paid employees working for Defendants at their various locations and
21 jobsites in California, including Plaintiff and class members. Based upon information and
22 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
23 employees in California, irrespective of their work locations. Upon information and belief,
24 Defendants process payroll for departing employees in the same manner throughout the State
25 of California, regardless of the manner in which each employee’s employment ends.

26 22. Defendants continue to employ non-exempt or hourly paid employees in
27 California.

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1 23. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
3 advisors knowledgeable about California labor and wage law, employment and personnel
4 practices, and about the requirements of California law.

5 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
6 members were not paid for all hours worked because all hours worked were not recorded.

7 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive certain wages for
9 overtime compensation and that they were not receiving certain wages for overtime
10 compensation.

11 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to be paid at a regular rate of
13 pay, and corresponding overtime rate of pay, that included as eligible income all remuneration
14 required by law, including but not limited to, all income derived from incentive pay,
15 nondiscretionary bonuses, and/or other forms of compensation.

16 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive at least minimum
18 wages for compensation and that they were not receiving at least minimum wages for work that
19 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
20 class members were not paid at least minimum wages for work done off-the-clock.

21 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to meal periods in accordance
23 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
24 additional hour of pay at their regular rates of pay when they were not provided with timely,
25 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
26 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
27 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

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1 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to rest periods in accordance
3 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
4 additional hour of pay at their regular rates of pay when they were not authorized and permitted
5 to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class
6 members were not authorized and permitted to take compliant rest periods, nor did Defendants
7 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
8 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

9 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive complete and
11 accurate wage statements in accordance with California law. In violation of the California
12 Labor Code, Plaintiff and class members were not provided complete and accurate wage
13 statements.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that they had a duty to maintain accurate and complete payroll records in
16 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
17 knowingly, and intentionally failed to do so.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to timely payment of all
20 wages earned upon termination of employment. In violation of the California Labor Code,
21 Plaintiff and class members did not receive payment of all wages due, including, but not limited
22 to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
23 time periods.

24 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to timely payment of wages
26 during their employment. In violation of the California Labor Code, Plaintiff and class members
27 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
28 wages, and/or meal and rest period premiums, within permissible time periods.

1 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
3 and expenses Plaintiff and/or class members incurred obtaining mandatory physical
4 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

5 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive full reimbursement
7 for all business-related expenses and costs they incurred during the course and scope of their
8 employment and that they did not receive full reimbursement of applicable business-related
9 expenses and costs incurred.

10 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
12 and class members for all hours worked, and that Defendants had the financial ability to pay
13 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
14 represented to Plaintiff and class members that they were properly denied wages, all in order to
15 increase Defendants' profits.

16 **PAGA REPRESENTATIVE ALLEGATIONS**

17 37. At all times herein set forth, PAGA provides that any provision of law under the
18 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
19 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
20 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
21 behalf of themselves and other current or former employees pursuant to procedures outlined in
22 California Labor Code section 2699.3.

23 38. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
24 person who was employed by the alleged violator and against whom one or more of the alleged
25 violations was committed."

26 39. Plaintiff and other current and former employees of Defendants are "aggrieved
27 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
28 or former employees and one or more of the alleged violations were committed against them.

1 40. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
2 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
3 requirements have been met:

4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated, including the facts and theories to support the alleged violation.

8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(a) and any employer response to that notice shall be accompanied
10 by a filing fee of seventy-five dollars (\$75).

11 (c) The LWDA shall notify the employer and the aggrieved employee or
12 representative by certified mail that it does not intend to investigate the
13 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
14 the postmark date of the aggrieved employee's notice. Upon receipt of
15 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
16 (65) calendar days of the postmark date of the aggrieved employee's
17 notice, the aggrieved employee may commence a civil action pursuant to
18 California Labor Code section 2699 to recover civil penalties.

19 41. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
20 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
21 other than those listed in Section 2699.5 after the following requirements have been met:

22 (a) The aggrieved employee or representative shall give written notice by
23 online filing with the LWDA and by certified mail to the employer of the
24 specific provisions of the California Labor Code alleged to have been
25 violated (other than those listed in Section 2699.5), including the facts and
26 theories to support the alleged violation.

27 (b) An aggrieved employee's notice filed with the LWDA pursuant to
28 2699.3(c) and any employer response to that notice shall be accompanied

1 by a filing fee of seventy-five dollars (\$75).

2 (c) The employer may cure the alleged violation within thirty-three (33)
3 calendar days of the postmark date of the notice sent by the aggrieved
4 employee or representative. The employer shall give written notice
5 within that period of time by certified mail to the aggrieved employee or
6 representative and by online filing with the LWDA if the alleged violation
7 is cured, including a description of actions taken, and no civil action
8 pursuant to Section 2699 may commence. If the alleged violation is not
9 cured within the 33-day period, the aggrieved employee may commence
10 a civil action pursuant to Section 2699.

11 42. On March 4, 2021, Plaintiff provided written notice by online filing to the LWDA
12 and by Certified Mail to Defendants of the specific provisions of the California Labor Code
13 alleged to have been violated, including facts and theories to support the alleged violations, in
14 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
15 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
16 Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case
17 Number LWDA-CM-823517-21. A true and correct copy of Plaintiff's written notice to the
18 LWDA and Defendants is attached hereto as "Exhibit 1."

19 43. As of the filing date of this complaint, over 65 days have passed since Plaintiff
20 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
21 to investigate Plaintiff's claims and Defendants have not cured the violations.

22 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
23 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
24 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 512(a),
25 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

26 45. Labor Code section 558(a) provides "[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provision regulating hours and days of work in any order of the Industrial Welfare Commission

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
2 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
3 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
4 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
5 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
6 criminal penalty provided by law.”

7 46. Defendants, at all times relevant to this complaint, were employers or persons
8 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
9 rights by violating various sections of the California Labor Code as set forth above.

10 47. As set forth below, Defendants have violated numerous provisions of both the
11 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
12 Order.

13 48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
14 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
15 private attorney general, seeks assessment and collection of civil penalties for himself, all other
16 aggrieved employees, and the State of California against Defendants for violations of California
17 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 512(a), 516, 1174(d), 1182.12,
18 1194, 1197, 1197.1, 1198, and 2802.

19 **CLASS ACTION ALLEGATIONS**

20 49. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
21 other persons similarly situated, and thus seeks class certification under California Code of Civil
22 Procedure section 382.

23 50. All claims alleged herein arise under California law for which Plaintiff seeks
24 relief authorized by California law.

25 51. Plaintiff’s proposed class consists of and is defined as follows:

26 All persons who worked for Defendants as non-exempt, hourly
27 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial (“Class”).

28 52. Plaintiff’s proposed subclass consists of and is defined as follows:

1 All persons who worked for Defendants as non-exempt, hourly
2 paid employees in California and who received at least one wage
3 statement within one (1) year prior to the filing of the initial
complaint until the date of trial (“Subclass”).

4 53. Members of the Class and Subclass are referred to herein as “class members.”

5 54. Plaintiff reserves the right to redefine the Class and Subclass and to add
6 additional subclasses as appropriate based on further investigation, discovery, and specific
7 theories of liability.

8 55. There are common questions of law and fact as to class members that
9 predominate over questions affecting only individual members, including, but not limited to:

- 10 (a) Whether Defendants required Plaintiff and class members to work over
11 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
12 hours per week and failed to pay all legally required overtime
13 compensation to Plaintiff and class members;
- 14 (b) Whether Defendants failed to properly calculate the “regular rate” of pay
15 on which Plaintiff’s and class members’ overtime rate of pay was based;
- 16 (c) Whether Defendants failed to pay Plaintiff and class members at least
17 minimum wages for all hours worked;
- 18 (d) Whether Defendants failed to provide Plaintiff and class members with
19 meal periods;
- 20 (e) Whether Defendants failed to authorize and permit Plaintiff and class
21 members to take rest periods;
- 22 (f) Whether Defendants provided Plaintiff and class members with complete
23 and accurate wage statements as required by California Labor Code
24 section 226(a);
- 25 (g) Whether Defendants maintained accurate payroll records as required by
26 California Labor Code section 1174(d);
- 27 (h) Whether Defendants failed to pay earned overtime wages, minimum
28 wages, and/or meal and rest period premiums, due to Plaintiff and class

members upon their discharge;

- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiff and class members during their employment;
- (j) Whether Defendants failed to pay Plaintiff and/or class members for the costs of mandatory physical examinations and/or drug testing;
- (k) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (l) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (m) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

56. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined

community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime

(Against all Defendants)

57. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 58. Labor Code section 1198 makes it illegal to employ an employee under
3 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
4 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
5 shall be the . . . standard conditions of labor for employees. The employment of any employee
6 . . . under conditions of labor prohibited by the order is unlawful.”

7 59. California Labor Code section 1198 and the applicable IWC Wage Order provide
8 that it is unlawful to employ persons without compensating them at a rate of pay either time-
9 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
10 worked by the person on a daily or weekly basis.

11 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
12 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
13 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
14 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

15 61. The applicable IWC Wage Order further provides that Defendants are and were
16 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
17 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
18 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
19 employee, including nondiscretionary bonuses and incentive pay.

20 62. California Labor Code section 510 codifies the right to overtime compensation
21 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
22 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
23 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
24 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
25 the seventh (7th) day of work.

26 63. During the relevant time period, Defendants willfully failed to pay all overtime
27 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
28 members were not paid overtime premiums for all of the hours they worked in excess of eight

(8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

64. First, during the relevant period, Defendants had, and continue to have, a policy and/or practice of requiring Plaintiff and class members to continue to perform work-related tasks while off-the-clock, such as communicating with Defendants' management via their personal cell phones or continuing to perform their assigned duties. For example, about three (3) times per week, Plaintiff's supervisor would call him to discuss work-related matters and assignments, which took up to five (5) minutes per instance. As a further example, when Plaintiff was required to return to work outside of his scheduled shifts to troubleshoot issues with machines and perform repairs, some of Defendants' managers instructed Plaintiff and class members not to clock in, saying they would manually enter Plaintiff's and class members' hours worked into the timekeeping system, but then failed to do so. Plaintiff would be called in at least twice per year to assist with such repairs and spent up to two (2) hours per instance. Thus, Defendants failed to track this time spent working after scheduled shifts, and Plaintiff and class members received no compensation for this time.

65. Second, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their locations while assigning heavy workloads, resulting in a failure to provide Plaintiff and class members with adequate meal period coverage. Because Defendants understaffed their locations, there was no one available to relieve employees needing meal period coverage, and Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Defendants also had a practice of failing to schedule meal periods, which further caused Plaintiff and class members to not be relieved of their duties for compliant meal periods. Moreover, Defendants also had a company-wide policy and/or practice of requiring Plaintiff and class members to carry company-issued radios and respond to any calls at all times during their shifts. Defendants required that Plaintiff and class members be available via radio at all times, including during their unpaid meal periods. Thus, Plaintiff and class members had their meal periods interrupted and/or had to forgo their meal periods altogether, in order to handle

1 their workloads. For example, Plaintiff's meal periods were cut short or interrupted daily by
2 supervisors or management requesting his assistance via radio because there were no other
3 employees available to complete these duties.

4 66. Additionally, due to the lack of meal period coverage and radio policy,
5 Defendants required Plaintiff and class members to remain on or near the work premises for
6 their meal periods. Because Plaintiff and class members were restricted from leaving the
7 premises during meal periods, they were denied the ability to use their meal periods freely for
8 their own purposes. Thus, Defendants effectively maintained control over Plaintiff and class
9 members during meal periods.

10 67. Third, upon information and belief, because Defendants frowned upon
11 employees accruing meal period penalties, Defendants pressured Plaintiff and class members to
12 clock out for meal periods and/or adjusted employee time records to reflect compliant meal
13 periods, regardless of whether they had received a compliant meal period, in order to strictly
14 limit meal penalties that Defendants would otherwise owe. For example, Plaintiff was pressured
15 by Defendants' management to clock out and record compliant meal periods on shifts when he
16 had not, in fact, received a compliant meal period. Also, Defendants' company-wide
17 timekeeping system further prevented Plaintiff and class members from recording all hours
18 worked when their meal periods were shortened or interrupted, because the system locked out
19 Plaintiff and class members once they clocked out for a meal period and would not permit them
20 to clock back in from a meal period before 30 minutes had elapsed.

21 68. Defendants knew or should have known that as a result of these company-wide
22 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
23 the-clock before and after their shifts and during meal periods, and were suffered or permitted
24 to perform work for which they were not paid. Because Plaintiff and class members worked
25 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
26 clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were
27 not paid overtime wages for all of the overtime hours they actually worked.

28 69. Furthermore, on information and belief, Defendants did not pay Plaintiff and

1 class members the correct overtime rate for the recorded overtime hours that they generated. In
2 addition to an hourly wage, Defendants paid Plaintiff and class members incentive pay,
3 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
4 California Labor Code, Defendants failed to incorporate all compensation, including incentive
5 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
6 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
7 when Plaintiff and class members worked overtime and received these other forms of pay,
8 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

9 70. For example, Defendants paid Plaintiff and class members nondiscretionary
10 bonuses based on a profit-sharing formula. During pay periods that Plaintiff and class members
11 were paid overtime wages, Defendants did not always incorporate the nondiscretionary bonuses
12 and/or incentive pay into Plaintiff's and class members' regular rate of pay and, as a result, paid
13 them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants
14 paid Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5 times their
15 regular rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on
16 all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and class
17 members on a company-wide basis.

18 71. Defendants' failure to pay Plaintiff and class members the balance of overtime
19 compensation as required by California law, violates the provisions of California Labor Code
20 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
21 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
22 and attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 25 **Minimum Wages** 26 **(Against all Defendants)**

27 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

74. As stated, due to Defendants’ policy and/or practice requiring Plaintiff and class members to perform work off-the-clock, Defendants systematically failed to pay Plaintiff and class members for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to Defendants’ uniform practice of understaffing, assigning heavy workloads, failing to schedule meal periods, requiring employees to carry and respond to their radios at all times, and requiring employees to stay on or near the work premises during meal periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. As also stated, in order to prevent employees from accruing meal period penalties, upon information and belief, Defendants’ management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working. Moreover, Defendants’ timekeeping system did not permit Plaintiff and class members to clock back in early when their meal periods were interrupted or cut short. Thus, Defendants systematically failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

75. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

76. Defendants’ failure to pay Plaintiff and class members minimum wages violates

1 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
2 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
3 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

4 **THIRD CAUSE OF ACTION**

5 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

6 **Violations**

7 **(Against all Defendants)**

8 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 78. At all relevant times herein set forth, California Labor Code section 512(a)
11 provides that an employer may not require, cause, or permit an employee to work for a period
12 of more than five (5) hours per day without providing the employee with a meal period of not
13 less than thirty (30) minutes, except that if the total work period per day of the employee is not
14 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
15 and the employee. Under California law, first meal periods must start after no more than five
16 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

17 79. At all relevant times herein set forth, California Labor Code sections 226.7,
18 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
19 meal period mandated by an applicable order of the IWC.

20 80. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
21 the applicable IWC Wage Order require employers to provide a second meal period of not less
22 than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee
23 one (1) additional hour of pay at the employee's regular rate, except that if the total hours
24 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
25 consent of the employer and the employee only if the first meal period was not waived.

26 81. As stated, during the relevant time period, Defendants had, and continue to have,
27 a company-wide policy and/or practice of understaffing while assigning heavy workloads,
28 which resulted in a lack of meal period coverage and prevented Plaintiff and class members

1 from taking all timely, uninterrupted meal periods to which they were entitled. Further,
2 Defendants had a company-wide practice of failing to schedule meal periods, resulting in
3 Plaintiff and class members having their meal periods cut short to return to work or waiting
4 extended periods of time before taking meal periods, due to the workload and lack of coverage.
5 Additionally, as described above, Defendants' requirement that employees carry radios at all
6 times also prevented Plaintiff and class members from taking compliant meal periods.

7 82. Defendants' practices and policies prevented Plaintiff and class members from
8 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
9 members would be forced to work in excess of five (5) hours before taking a meal period and,
10 at times, had their meal periods interrupted and/or had to forgo their meal periods altogether.
11 For example, at least three (3) times per week, Plaintiff took his meal periods late, after the end
12 of his sixth hour of work, in order to finish his assigned duties, such as troubleshooting or
13 repairing broken machines. Plaintiff's meal periods were also cut short or interrupted daily by
14 supervisors or management requesting his assistance via radio.

15 83. Furthermore, as stated above, in conjunction with these policies and/or practices,
16 Defendants required Plaintiff and class members to remain on or near the work premises for
17 their meal periods. Because Plaintiff and class members were restricted from leaving the work
18 premises during meal periods, they were denied the ability to use their meal periods freely for
19 their own purposes. Thus, Defendants effectively maintained control over Plaintiff and class
20 members during meal periods.

21 84. Moreover, as stated, on information and belief, because Defendants frowned
22 upon employees accruing meal period penalties, Defendants' management pressured Plaintiff
23 and class members to clock out for meal periods and/or adjusted Plaintiff's and class members'
24 time records to reflect compliant meal periods, regardless of whether they had received a
25 compliant meal period, in order to strictly limit meal penalties that would need to be paid by
26 Defendants. For example, Plaintiff was required to clock out for his meal periods before the
27 fifth hour of his shifts to record that he had received compliant meal periods on shifts when he
28 had not, in fact, received these timely meal periods. As also stated, Defendants' company-wide

1 timekeeping system prevented Plaintiff and class members from recording all hours worked
2 when their meal periods were shortened or interrupted, because the system locked out Plaintiff
3 and class members once they clocked out for a meal period and would not permit them to clock
4 back in from a meal period before 30 minutes had elapsed.

5 85. Additionally, Defendants did not provide Plaintiff and class members with
6 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
7 During his employment, Plaintiff was never provided a second meal period even though he
8 regularly worked shifts of ten (10) hours or more. Plaintiff and class members did not sign valid
9 meal period waivers on days that they were entitled to meal periods and were not relieved of all
10 duties.

11 86. At all times herein mentioned, Defendants knew or should have known that, as a
12 result of these policies, Plaintiff and class members were prevented from being relieved of all
13 duties and required to perform some of their assigned duties during meal periods. Defendants
14 further knew or should have known that Defendants did not pay Plaintiff and class members
15 meal period premiums when meal periods were late, interrupted, shortened, or missed.

16 87. Moreover, Defendants engaged in a company-wide practice and/or policy of not
17 paying all meal period premiums owed when compliant meal periods are not provided. Because
18 of Defendants' practices and/or policies, Plaintiff and class members have not received premium
19 pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that
20 Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted
21 meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
22 premiums because Defendants systematically failed to include all forms of compensation, such
23 as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular
24 rate of pay. As a result, Defendants failed to provide Plaintiff and class members compliant
25 meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed
26 to pay the full meal period premiums due.

27 88. Defendants' conduct violates the applicable IWC Wage Order, and California
28 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore

entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)

89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

90. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class members' employment by Defendants.

91. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

92. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

93. During the relevant time period, Defendants regularly failed to authorize and

1 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
2 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
3 policy and/or practice of understaffing while assigning heavy workloads prevented Plaintiff and
4 class members from being relieved of all duty in order to take compliant rest periods. Moreover,
5 as stated, Defendants also had a company-wide policy and/or practice of requiring employees
6 to carry company-issued radios and respond to any calls at all times during their shifts, including
7 rest periods. Additionally, Defendants failed to schedule rest periods at all, which, coupled with
8 Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and class
9 members not being authorized and permitted to take compliant rest periods.

10 94. Furthermore, upon information and belief, Defendants maintained a company-
11 wide on-premises practice and/or policy requiring that Plaintiff and class members remain on
12 Defendants' premises during their rest periods. Because Plaintiff and class members were
13 restricted from leaving the premises during rest periods, they were denied the ability to use their
14 rest periods freely for their own purposes. Thus, Defendants effectively maintained control
15 over Plaintiff and class members during rest periods.

16 95. As a result of Defendants' practices and policies, Plaintiff and class members
17 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
18 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
19 Plaintiff missed at least five (5) rest periods per week because of the heavy workload and lack
20 of coverage. Additionally, Plaintiff was never authorized or permitted to take a third rest period
21 even though he regularly worked shifts in excess of 10 hours.

22 96. Defendants have also engaged in a company-wide policy and/ or practice of not
23 paying all rest period premiums owed when compliant rest periods are not authorized and
24 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members one
25 (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
26 class members at the correct rate of pay for premium wages because Defendants failed to include
27 all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
28 of remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff and class

members rest periods and failed to pay them rest period premiums due, in violation of Labor Code section 226.7, 516, and the applicable IWC Wage Order.

97. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records (Against all Defendants)

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

99. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

100. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

101. Because Defendants did not record the time Plaintiff and Subclass members spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and

1 Subclass members in compliance with section 226(a)(1) and section 226(a)(5), respectively.
2 For the same reason, Defendants failed to accurately list the total number of hours worked by
3 Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list the applicable
4 hourly rates of pay in effect during the pay period and the corresponding accurate number of
5 hours worked at each hourly rate, in violation of section 226(a)(9)).

6 102. Second, because Defendants did not calculate Plaintiff's and Subclass members'
7 regular rate of pay correctly for purposes of paying overtime, Defendants did not list the correct
8 amount of gross wages earned by Plaintiff and Subclass members in compliance with section
9 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned
10 by Plaintiff and Subclass members in violation of section 226(a)(5). Defendants also failed to
11 correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime
12 rates of pay, in violation of section 226(a)(9).

13 103. The wage statement deficiencies also include, among other things, failing to list
14 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
15 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
16 the last four digits of his or her social security number or an employee identification number
17 other than a social security number; failing to list the name and address of the legal entity that
18 is the employer; failing to list the inclusive dates of the period for which employees were paid;
19 and/or failing to state all hours worked as a result of not recording or stating the hours they
20 worked off-the-clock.

21 104. California Labor Code section 1198 provides that the maximum hours of work
22 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
23 forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment
24 of any employees for longer hours than those fixed by the order or under conditions of labor
25 prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers
26 are required to keep accurate time records showing when the employee begins and ends each
27 work period and meal period. During the relevant time period, Defendants failed, on a
28 company-wide basis, to keep accurate records of work period and meal period start and stop

1 times for Plaintiff and Subclass members, in violation of section 1198. As stated, Defendants
2 engaged in a company-wide practice and/or policy of falsifying Plaintiff's and Subclass
3 members' time records by recording that compliant meal periods were taken regardless of if or
4 when meal periods were actually taken, and thereby failed to keep accurate records of meal start
5 and end times for Plaintiff and Subclass members. Furthermore, in light of Defendants' failure
6 to provide Plaintiff and Subclass members with second 30-minute meal periods to which they
7 were entitled, Defendants kept no records of meal start and end times for second meal periods.

8 105. California Labor Code section 1174(d) provides that "[e]very person employing
9 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
10 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
11 plants or establishments at which employees are employed, payroll records showing the hours
12 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
13 applicable piece rate paid to, employees employed at the respective plants or
14 establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d),
15 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
16 members showing the daily hours they worked and the wages paid thereto as a result of failing
17 to record the off-the-clock hours that they worked.

18 106. Plaintiff and Subclass members are entitled to recover from Defendants the
19 greater of their actual damages caused by Defendants' failure to comply with California Labor
20 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
21 employee.

22 **SIXTH CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 24 **Termination** 25 **(Against all Defendants)**

26 107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 108. This cause of action is dependent upon, and wholly derivative of, the overtime

1 wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to
2 Plaintiff and those class members no longer employed by Defendants upon their termination.

3 109. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
4 that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
6 her employment, his or her wages shall become due and payable not later than seventy-two (72)
7 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
8 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
9 quitting.

10 110. Defendants willfully failed to pay Plaintiff and class members who are no longer
11 employed by Defendants the earned and unpaid wages set forth above, including but not limited
12 to, overtime wages, minimum wages, and/or meal and rest period premiums either at the time
13 of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

14 111. Defendants' failure to pay Plaintiff and class members who are no longer
15 employed by Defendants their wages earned and unpaid at the time of discharge, or within
16 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
17 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
18 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
19 thirty (30) day maximum pursuant to California Labor Code section 203.

20 SEVENTH CAUSE OF ACTION

21 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 22 Employment 23 (Against all Defendants)

24 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 113. This cause of action is dependent upon, and wholly derivative of, the overtime
27 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
28 Plaintiff and those class members.

114. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

115. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

116. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

117. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums within the time periods specified by California Labor Code section 204.

118. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

120. At all times herein set forth, California Labor Code section 2802 provides that

1 an employer must reimburse employees for all necessary expenditures and losses incurred by
2 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
3 to prevent employers from passing off their cost of doing business and operating expenses on
4 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
5 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w]hen tools or
6 equipment are required by the employer or are necessary to the performance of a job, such tools
7 and equipment shall be provided and maintained by the employer, except that an employee
8 whose wages are at least two (2) times the minimum wage provided herein may be required to
9 provide and maintain hand tools and equipment customarily required by the trade or craft.”

10 121. First, Defendants, on a company-wide basis, required that Plaintiff and class
11 members use their own personal cellular phones and/or cellular data to carry out their job duties,
12 but failed to reimburse them for the costs of their work-related cellular phone expenses. For
13 example, Plaintiff and class members received calls and text messages from their supervisors
14 several times per week to discuss work-related matters. Although Defendants required Plaintiff
15 and class members to utilize their personal cellular phones to carry out their work-related
16 responsibilities, Defendants failed to fully reimburse them for this cost.

17 122. Second, Defendants had a company-wide policy of requiring Plaintiff and class
18 members to utilize their own personal vehicles for work purposes, such as picking up materials
19 from different sites, but failed to reimburse them for all costs of travel, including mileage. For
20 example, on at least one occasion, Plaintiff drove 8-10 miles roundtrip to pick up stainless-steel
21 materials from Defendants’ materials warehouse. Although Defendants required other Plaintiff
22 and class members to utilize their own vehicles to travel to and from Defendants’ other locations,
23 Defendants did not reimburse them for all of their travel expenses.

24 123. Defendants could have provided Plaintiff and class members with the actual tools
25 for use on the job, such as company phones and company vehicles. Or, Defendants could have
26 fully reimbursed employees for their cellular phone expenses and mileage. Instead, Defendants
27 passed these operating costs off onto Plaintiff and class members.

28 124. Defendants’ company-wide policy and/or practice of passing on their operating

costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and class members for necessary business-related expenses and costs.

125. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

126. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

127. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

128. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiff

and other aggrieved employees with meal periods, as alleged herein;

- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (i) Violation of Labor Code section 222.5 for failing to compensate other aggrieved employees for mandatory physical examinations and/or drug testing, as set forth below; and
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

129. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

130. During the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory physical examination and/or drug testing but required them to do so at their own expense. Upon information and belief, Defendants had a company-wide policy requiring that all employees travel to a specified medical facility using their own personal vehicles to undergo physical examinations, and/or drug testing. At all times, Defendants were in control of scheduling the

1 date and time for the examinations and/or testing, selecting the provider/facility where the
2 examinations and/or testing were to take place, and determining the scope of the examinations
3 and/or testing.

4 131. However, Defendants did not compensate other aggrieved employees for the time
5 they spent traveling to and from their drug tests and/or physical examinations, for the time they
6 spent undergoing the testing and/or examinations, or reimburse them for the travel expenses
7 they incurred getting to and from the medical facilities. Defendants' policy and/or practice of
8 not paying for all costs other aggrieved employees incurred obtaining mandatory physical
9 examinations and/or drug testing is in violation of California Labor Code section 222.5. Other
10 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
11 sections 2699(a), (f), and (g).

12 **TENTH CAUSE OF ACTION**

13 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

14 **Unlawful Business Practices**

15 **(Against all Defendants)**

16 132. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 133. Defendants are "persons" as defined by California Business & Professions Code
19 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
20 associations.

21 134. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
22 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
23 suffered injury in fact and has lost money as a result of Defendants' unlawful business practices.
24 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
25 Code of Civil Procedure section 1021.5.

26 135. Defendants' activities, as alleged herein, are violations of California law, and
27 constitute unlawful business acts and practices in violation of California Business & Professions
28 Code sections 17200, *et seq.*

1 136. A violation of California Business & Professions Code sections 17200, *et seq.*
2 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
3 policies and practices have violated state law in at least the following respects:

- 4 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
5 class members, to work overtime without paying them proper
6 compensation in violation of California Labor Code sections 510 and
7 1198 and the applicable IWC Wage Order, and paying Plaintiff and class
8 members overtime at a lower rate than required by law by failing to
9 properly calculate the regular rate of pay for purposes of overtime, as
10 alleged herein;
- 11 (b) Failing to pay at least minimum wage to Plaintiff and class members in
12 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
13 and 1198 and the applicable IWC Wage Order, as alleged herein;
- 14 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
15 members in violation of California Labor Code sections 226.7, 512(a),
16 516, and 1198 and the applicable IWC Wage Order, as alleged herein;
- 17 (d) Failing to authorize and permit Plaintiff and class members to take
18 uninterrupted rest periods in violation of California Labor Code sections
19 226.7, 516, and 1198 and the applicable IWC Wage Order, as alleged
20 herein;
- 21 (e) Failing to provide Plaintiff and class members with accurate wage
22 statements and failing to maintain accurate payroll records in violation of
23 California Labor Code sections 226(a), 1174(d), and 1198 and the
24 applicable IWC Wage Order, as alleged herein;
- 25 (f) Failing timely to pay all earned wages to Plaintiff and class members in
26 violation of California Labor Code section 204, as alleged herein; and
- 27 (g) Failing to reimburse Plaintiff and class members for all business expenses
28 necessarily incurred in violation of California Labor Code section 2802,

1 as alleged herein.

2 137. As a result of the violations of California law herein described, Defendants
3 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
4 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

5 138. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
6 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
7 Defendants during a period that commences four years prior to the filing of this complaint; a
8 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
9 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
10 section 1021.5 and other applicable laws; and an award of costs.

11 **ELEVENTH CAUSE OF ACTION**

12 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

13 **Unfair Business Practices**

14 **(Against all Defendants)**

15 139. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 140. Defendants are "persons" as defined by California Business & Professions Code
18 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
19 associations.

20 141. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
21 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
22 fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to
23 enforce important rights affecting the public interest within the meaning of Code of Civil
24 Procedure section 1021.5.

25 142. Defendants' activities, namely Defendants' company-wide practice and/or policy
26 of not paying Plaintiff and class members all meal and rest period premiums due to them under
27 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
28 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by

1 section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and
2 secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
3 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
4 class members as part of their employment with Defendants, and thus Defendants’ practice
5 and/or policy of denying these statutory benefits constitutes an unfair business practice in
6 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

7 143. A violation of California Business & Professions Code sections 17200, *et seq.*
8 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
9 practices have violated the spirit of California’s meal and rest period laws and constitute acts
10 against the public policy behind these laws.

11 144. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
12 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
13 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
14 commences four years prior to the filing of this complaint; a permanent injunction requiring
15 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
16 members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section
17 1021.5 and other applicable laws; and an award of costs.

18 **REQUEST FOR JURY TRIAL**

19 Plaintiff requests a trial by jury.

20 **PRAYER FOR RELIEF**

21 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
22 Defendants, jointly and severally, as follows:

23 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
24 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
25 reserves the right to amend his prayer for relief to seek a different amount.

26 **Class Certification**

27 2. That this case be certified as a class action;

28 3. That Plaintiff be appointed as the representative of the Class and Subclass;

1 4. That counsel for Plaintiff be appointed as class counsel.

2 **As to the First Cause of Action**

3 5. That the Court declare, adjudge, and decree that Defendants violated California
4 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
5 pay all overtime wages due to Plaintiff and class members;

6 6. For general unpaid wages at overtime wage rates and such general and special
7 damages as may be appropriate;

8 7. For pre-judgment interest on any unpaid overtime compensation commencing
9 from the date such amounts were due, or as otherwise provided by law;

10 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
11 California Labor Code section 1194(a); and

12 9. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Second Cause of Action**

15 10. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
17 Order by willfully failing to pay minimum wages to Plaintiff and class members;

18 11. For general unpaid wages and such general and special damages as may be
19 appropriate;

20 12. For pre-judgment interest on any unpaid compensation from the date such
21 amounts were due, or as otherwise provided by law;

22 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
23 California Labor Code section 1194(a);

24 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

25 15. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Third Cause of Action**

28 16. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by
2 willfully failing to provide all meal periods to Plaintiff and class members;

3 17. That the Court make an award to the Plaintiff and class members of one (1) hour
4 of pay at each employee's regular rate of pay for each workday that a meal period was not
5 provided;

6 18. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 19. For premiums pursuant to California Labor Code section 226.7(c);

9 20. For pre-judgment interest on any unpaid meal period premiums from the date
10 such amounts were due, or as otherwise provided by law;

11 21. For attorneys' fees pursuant to California Code of Civil Procedure section
12 1021.5, or as otherwise provided by law; and

13 22. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Fourth Cause of Action**

16 23. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully
18 failing to authorize and permit Plaintiff and class members to take all rest periods;

19 24. That the Court make an award to the Plaintiff and class members of one (1) hour
20 of pay at each employee's regular rate of pay for each workday that a rest period was not
21 authorized and permitted;

22 25. For all actual, consequential, and incidental losses and damages, according to
23 proof;

24 26. For premiums pursuant to California Labor Code section 226.7(c);

25 27. For pre-judgment interest on any unpaid rest period premiums from the date such
26 amounts were due, or as otherwise provided by law;

27 28. For attorneys' fees pursuant to California Code of Civil Procedure section
28 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums, owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

1 41. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Seventh Cause of Action**

4 42. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
6 wages, minimum wages, and/or meal and rest period premiums, during their employment;

7 43. For all actual, consequential and incidental losses and damages, according to
8 proof;

9 44. For statutory penalties according to proof pursuant to California Labor Code
10 section 210;

11 45. For pre-judgment interest on any unpaid wages from the date such amounts were
12 due, or as otherwise provided by law;

13 46. For attorneys' fees pursuant to California Code of Civil Procedure section
14 1021.5, or as otherwise provided by law; and

15 47. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Eighth Cause of Action**

18 48. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
20 expenses and costs incurred by Plaintiff and class members;

21 49. For unpaid business-related expenses and such general and special damages as
22 may be appropriate;

23 50. For pre-judgment interest on any unpaid business-related expenses from the date
24 such amounts were due, or as otherwise provided by law;

25 51. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
28 or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or drug testing; and 2802 (by failing to reimburse business expenses);

55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all

1 meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods,
2 failing to provide Plaintiff and class members accurate and complete wage statements, failing
3 to maintain accurate payroll records for Plaintiff and class members, failing timely to pay
4 Plaintiff and class members all earned wages during employment, and failing to reimburse
5 Plaintiff and class members for business-related expenses, constitutes an unlawful business
6 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

7 60. For restitution of unpaid wages to Plaintiff and all class members and
8 prejudgment interest from the day such amounts were due and payable;

9 61. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections, 17200,
12 *et seq.*;

13 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5; and

15 63. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Eleventh Cause of Action**

18 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
19 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
20 unfair business practice in violation of California Business and Professions Code sections
21 17200, *et seq.*;

22 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
23 from Plaintiff and class members and prejudgment interest from the day such amounts were due
24 and payable;

25 66. For the appointment of a receiver to receive, manage and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code sections 17200,
28 *et seq.*;

1 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 68. For pre-judgment and post-judgment interest as provided by law; and

4 69. For such other and further relief as the Court may deem equitable and
5 appropriate.

6

7 Dated: June 25, 2021

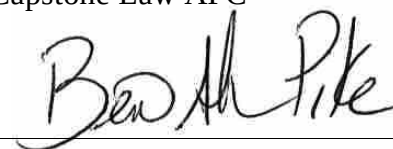
Respectfully submitted,

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Capstone Law APC

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By: 

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Bevin Allen Pike

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Daniel Jonathan

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Trisha K. Monesi

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Attorneys for Plaintiff Martin Asencio Rojas

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EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 4, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Martin Asencio Rojas v. Pulmuone Foods USA, Inc., et al.*

Dear PAGA Administrator:

This office represents Martin Asencio Rojas in connection with his claims under the California Labor Code. Mr. Asencio Rojas was an employee of PULMUONE FOODS USA, INC.; PULMUONE U.S.A., INC.; and/or NASOYA FOODS USA, LLC. For the purpose of this letter, Mr. Asencio Rojas collectively refers to these entities as “PULMUONE.”

The employers may be contacted directly at the addresses below:

PULMUONE FOODS USA, INC.
2315 MOORE AVENUE
FULLERTON CA 92833

PULMUONE U.S.A., INC.
2315 MOORE AVE
FULLERTON CA 92833

NASOYA FOODS USA, LLC
1 NEW ENGLAND WAY
AYER MA 01432

Mr. Asencio Rojas intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Asencio Rojas seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PULMUONE as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PULMUONE employed Mr. Asencio Rojas as an hourly paid, non-exempt employee from approximately April 2012 to November 2020. Over the course of his employment, Mr. Asencio Rojas worked in various positions, including: Maintenance Mechanic, HVAC Mechanic, Senior Utilities Refrigeration Specialist, and finally, Master Mechanic. Mr. Asencio Rojas worked for PULMUONE at its location in Gilroy, California. During his employment, Mr. Asencio Rojas

typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time Mr. Asencio Rojas's employment with PULMUONE ended, he earned approximately \$30.30 per hour. His job duties included, without limitation, troubleshooting and repairing machines, maintaining a clean work area, and maintaining the mechanic shop.

PULMUONE committed one or more of the following Labor Code violations against Mr. Asencio Rojas, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

PULMUONE's Company-Wide and Uniform Payroll and HR Practices

PULMUONE FOODS USA, INC. and PULMUONE U.S.A., INC. are an Iowa corporation and a California corporation, respectively, while NASOYA FOODS USA, LLC is a Delaware limited liability company. Together, PULMUONE is a leader in providing fresh, natural, and organic food products that feature globally inspired foods and plant-based protein, with brands that include Nasoya, Wildwood, Emerald Valley Kitchen, Monterey Gourmet Foods, and Cibo Naturals. Upon information and belief, PULMUONE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Fullerton, California, for all non-exempt, hourly paid employees working for PULMUONE in California, including Mr. Asencio Rojas and other aggrieved employees. At all relevant times, PULMUONE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Asencio Rojas and other aggrieved employees, regardless of its location or position.

Upon information and belief, PULMUONE maintains a centralized Payroll department at its corporate headquarters in Fullerton, California, which processes payroll for all non-exempt, hourly paid employees working for PULMUONE in California, including Mr. Asencio Rojas and other aggrieved employees. Further, PULMUONE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Asencio Rojas and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, PULMUONE utilized the same methods and formulas when calculating wages due to Mr. Asencio Rojas and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40)

¹ These facts, theories, and claims are based on Mr. Asencio Rojas's experience and counsel's review of those records currently available relating to Mr. Asencio Rojas's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Asencio Rojas reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

PULMUONE willfully failed to pay all overtime wages owed to Mr. Asencio Rojas and other aggrieved employees. During the relevant time period, Mr. Asencio Rojas and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, PULMUONE had, and continues to have, a policy and/or practice of requiring Mr. Asencio Rojas and other aggrieved employees to continue to perform work-related tasks while off-the-clock, such as communicating with PULMUONE's management via their personal cell phones or continuing to perform their assigned duties. For example, about three (3) times per week, Mr. Asencio Rojas's supervisor would call him to discuss work-related matters and assignments, which took up to five (5) minutes per instance. As a further example, when Mr. Asencio Rojas was required to return to work outside of his scheduled shifts to troubleshoot issues with machines and perform repairs, some of PULMUONE's managers instructed Mr. Asencio Rojas and other aggrieved employees not to clock in, saying they would manually enter Mr. Asencio Rojas's and other aggrieved employees' hours worked into the timekeeping system, but then failed to do so. Mr. Asencio Rojas would be called in at least twice per year to assist with such repairs and spent up to two (2) hours per instance. Thus, PULMUONE failed to track this time spent working after scheduled shifts, and Mr. Asencio Rojas and other aggrieved employees received no compensation for this time.

Second, PULMUONE had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, resulting in a failure to provide Mr. Asencio Rojas and other aggrieved employees with adequate meal period coverage. Because PULMUONE understaffed its locations, there was no one available to relieve employees needing meal period coverage, and Mr. Asencio Rojas and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. PULMUONE also had a practice of failing to schedule meal periods, which further caused Mr. Asencio Rojas and other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, PULMUONE also had a company-wide policy and/or practice of requiring Mr. Asencio Rojas and other aggrieved employees to carry company-issued radios and respond to any calls at all times during their shifts. PULMUONE required that Mr. Asencio Rojas and other aggrieved employees be available via radio at all times, including during their unpaid meal periods. Thus, Mr. Asencio Rojas and other aggrieved employees had their meal periods interrupted and/or had to forgo their meal periods altogether, in order to handle their workloads. For example, Mr. Asencio Rojas's meal periods were cut short or interrupted daily by supervisors or management requesting his assistance via radio because there were no other employees available to complete these duties.

Additionally, due to the lack of meal period coverage and radio policy, PULMUONE required Mr. Asencio Rojas and other aggrieved employees to remain on or near the work premises for their meal periods. Because Mr. Asencio Rojas and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their

own purposes. Thus, PULMUONE effectively maintained control over Mr. Asencio Rojas and other aggrieved employees during meal periods.

Third, upon information and belief, because PULMUONE frowned upon employees accruing meal period penalties, PULMUONE pressured Mr. Asencio Rojas and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that PULMUONE would otherwise owe. For example, Mr. Asencio Rojas was pressured by PULMUONE's management to clock out and record compliant meal periods on shifts when he had not, in fact, received a compliant meal period. Also, PULMUONE's company-wide timekeeping system further prevented Mr. Asencio Rojas and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Asencio Rojas and other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

PULMUONE knew or should have known that as a result of these company-wide practices and/or policies, Mr. Asencio Rojas and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Asencio Rojas and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Asencio Rojas and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, PULMUONE did not pay Mr. Asencio Rojas and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, PULMUONE paid Mr. Asencio Rojas and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PULMUONE failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Asencio Rojas and other aggrieved employees worked overtime and received these other forms of pay, PULMUONE failed to pay all overtime wages by paying a lower overtime rate than required.

For example, PULMUONE paid Mr. Asencio Rojas and other aggrieved employees nondiscretionary bonuses based on a profit-sharing formula. During pay periods that Mr. Asencio Rojas and other aggrieved employees were paid overtime wages, PULMUONE did not always incorporate the nondiscretionary bonuses and/or incentive pay into Mr. Asencio Rojas's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, PULMUONE paid Mr. Asencio Rojas and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. PULMUONE's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Asencio Rojas and other aggrieved employees on a company-wide basis.

Therefore, Mr. Asencio Rojas and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Mr. Asencio Rojas and other aggrieved employees are entitled to recover civil penalties,

attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

As stated, due to PULMUONE's policy and/or practice requiring Mr. Asencio Rojas and other aggrieved employees to perform work off-the-clock, PULMUONE systematically failed to pay Mr. Asencio Rojas and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to PULMUONE's uniform practice of understaffing, assigning heavy workloads, failing to schedule meal periods, requiring employees to carry and respond to their radios at all times, and requiring employees to stay on or near the work premises during meal periods, Mr. Asencio Rojas and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. As also stated, in order to prevent employees from accruing meal period penalties, upon information and belief, PULMUONE's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working. Moreover, PULMUONE's timekeeping system did not permit Mr. Asencio Rojas and other aggrieved employees to clock back in early when their meal periods were interrupted or cut short. Thus, PULMUONE systematically failed to pay Mr. Asencio Rojas and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Moreover, PULMUONE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time to undergo mandatory drug testing and/or physical examinations. At all times, PULMUONE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. PULMUONE gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of PULMUONE. However, PULMUONE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, PULMUONE did not pay for all hours worked by Mr. Asencio Rojas and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PULMUONE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1.

Accordingly, PULMUONE regularly failed to pay at least minimum wages to Mr. Asencio Rojas and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Asencio Rojas and other aggrieved employees

are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

As stated, during the relevant time period, PULMUONE had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Asencio Rojas and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, PULMUONE had a company-wide practice of failing to schedule meal periods, resulting in Mr. Asencio Rojas and other aggrieved employees having their meal periods cut short to return to work or waiting extended periods of time before taking meal periods, due to the workload and lack of coverage. Additionally, as described above, PULMUONE's requirement that employees carry radios at all times also prevented Mr. Asencio Rojas and other aggrieved employees from taking compliant meal periods.

PULMUONE's practices and policies prevented Mr. Asencio Rojas and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Asencio Rojas and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, at least three (3) times per week, Mr. Asencio Rojas took his meal periods late, after the end of his sixth hour of work, in order to finish his assigned duties, such as troubleshooting or repairing broken machines. Mr. Asencio Rojas's meal periods were also cut short or interrupted daily by supervisors or management requesting his assistance via radio.

Furthermore, as stated above, in conjunction with these policies and/or practices, PULMUONE required Mr. Asencio Rojas and other aggrieved employees to remain on or near the work premises for their meal periods. Because Mr. Asencio Rojas and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, PULMUONE effectively maintained control over Mr. Asencio Rojas and other aggrieved employees during meal periods.

Moreover, as stated, on information and belief, because PULMUONE frowned upon employees accruing meal period penalties, PULMUONE's management pressured Mr. Asencio Rojas and other aggrieved employees to clock out for meal periods and/or adjusted Mr. Asencio Rojas's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by PULMUONE. For example, Mr. Asencio Rojas was required to clock out for his meal periods before the fifth hour of his shifts to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods. As also stated, PULMUONE's company-wide timekeeping system prevented Mr. Asencio Rojas and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Asencio Rojas and other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Additionally, PULMUONE did not provide Mr. Asencio Rojas and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Asencio Rojas was never provided a second meal period even though he regularly worked shifts of ten (10) hours or more. Mr. Asencio Rojas and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, PULMUONE knew or should have known that, as a result of these policies, Mr. Asencio Rojas and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PULMUONE further knew or should have known that PULMUONE did not pay Mr. Asencio Rojas and other aggrieved employees all meal period premiums when meal periods were missed, late, shortened, or interrupted.

Furthermore, PULMUONE has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Asencio Rojas and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that PULMUONE did pay Mr. Asencio Rojas and other aggrieved employees premium pay for missed, late, and interrupted meal periods, PULMUONE did not pay Mr. Asencio Rojas and other aggrieved employees at the correct rate of pay for premiums because PULMUONE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, PULMUONE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Asencio Rojas and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “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” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, PULMUONE regularly failed to authorize and permit Mr. Asencio Rojas and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, PULMUONE’s company-wide policy and/or practice of understaffing while assigning heavy workloads prevented Mr. Asencio Rojas and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Moreover, as stated, PULMUONE also had a company-wide policy and/or practice of requiring employees to carry company-issued radios and respond to any calls at all times during their shifts, including rest periods. Additionally, PULMUONE failed to schedule rest periods at all, which, coupled with PULMUONE’s failure to provide adequate rest period coverage, further led to Mr. Asencio Rojas and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, PULMUONE maintained a company-wide on-premises practice and/or policy requiring that Mr. Asencio Rojas and other aggrieved employees remain on PULMUONE’s premises during their rest periods. Because Mr. Asencio Rojas and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, PULMUONE effectively maintained control over Mr. Asencio Rojas and other aggrieved employees during rest periods.

As a result of PULMUONE’s practices and policies, Mr. Asencio Rojas and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Asencio Rojas missed at least five (5) rest periods per week because of the heavy workload and lack of coverage. Additionally, Mr. Asencio Rojas was never authorized or permitted to take a third rest period even though he regularly worked shifts in excess of 10 hours.

PULMUONE has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that PULMUONE did pay Mr. Asencio Rojas and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PULMUONE did not pay Mr. Asencio Rojas and other aggrieved employees at the correct rate of pay for premiums because PULMUONE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, PULMUONE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Asencio Rojas and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. PULMUONE has not provided Mr. Asencio Rojas and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PULMUONE has knowingly and intentionally provided Mr. Asencio Rojas and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PULMUONE issued uniform wage statements to Mr. Asencio Rojas and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, PULMUONE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PULMUONE did not record the time Mr. Asencio Rojas and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), PULMUONE did not list the correct amount of gross wages and net wages earned by Mr. Asencio Rojas and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PULMUONE failed to accurately list the total number of hours worked by Mr. Asencio Rojas and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because PULMUONE did not calculate Mr. Asencio Rojas's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, PULMUONE did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, PULMUONE also failed to list the correct amount of net wages in violation of section 226(a)(5). PULMUONE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list 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; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[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. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PULMUONE willfully failed to maintain accurate payroll records for Mr. Asencio Rojas and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, PULMUONE failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Asencio Rojas and other aggrieved employees, in violation of section 1198. As stated, PULMUONE engaged in a company-wide practice and/or policy of falsifying Mr. Asencio Rojas’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Asencio Rojas and other aggrieved employees. Furthermore, in light of PULMUONE’s failure to provide Mr. Asencio Rojas and other aggrieved employees with second 30-minute meal periods to which they were entitled, PULMUONE kept no records of meal start and end times for second meal periods.

Because PULMUONE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Asencio Rojas and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Asencio Rojas and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Asencio Rojas and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, PULMUONE failed to pay Mr. Asencio Rojas and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Asencio Rojas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

PULMUONE willfully failed to pay Mr. Asencio Rojas and other aggrieved employees who are no longer employed by PULMUONE all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving PULMUONE's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Asencio Rojas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, PULMUONE implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical

examinations, but required them to do so at their own expense. As stated, PULMUONE had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, PULMUONE was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, PULMUONE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. PULMUONE's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, PULMUONE, on a company-wide basis, required that Mr. Asencio Rojas and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Asencio Rojas and other aggrieved employees received calls and text messages from their supervisors several times per week to discuss work-related matters. Although PULMUONE required Mr. Asencio Rojas and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, PULMUONE failed to fully reimburse them for this cost.

Second, PULMUONE had a company-wide policy of requiring Mr. Asencio Rojas and other aggrieved employees to utilize their own personal vehicles for work purposes, such as picking up materials from different sites, but failed to reimburse them for all costs of travel, including mileage. For example, on at least one occasion, Mr. Asencio Rojas drove 8-10 miles roundtrip to pick up stainless steel materials from PULMUONE's materials warehouse. Although PULMUONE required Mr. Asencio Rojas and other aggrieved employees to utilize their own vehicles to travel to and from PULMUONE's other locations, PULMUONE did not reimburse them for all of their travel expenses.

Third, during the relevant time period, PULMUONE had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them

for their travel expenses, including mileage. At all times, PULMUONE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. PULMUONE gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of PULMUONE. Although PULMUONE required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, PULMUONE never reimbursed them for their travel expenses.

PULMUONE could have provided Mr. Asencio Rojas and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles. Or, PULMUONE could have fully reimbursed employees for their cellular phone expenses, mileage, and travel expenses. Instead, PULMUONE passed these operating costs off onto Mr. Asencio Rojas and other aggrieved employees.

Thus, PULMUONE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Asencio Rojas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” PULMUONE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Asencio Rojas’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Asencio Rojas seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Asencio Rojas, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against PULMUONE for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Asencio Rojas seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: PULMUONE FOODS USA, INC. (via U.S. Certified Mail); PULMUONE U.S.A., INC. (via U.S. Certified Mail); NASOYA FOODS USA, LLC (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0001 8879 1609

one
AW APC
Park East, Ste 1000
CA 90067

PULMUONE FOODS USA, INC.
2315 MOORE AVENUE
FULLERTON CA 92833



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1. Article Addressed to:

PULMUONE FOODS USA, INC.
2315 MOORE AVENUE
FULLERTON CA 92833



9590 9402 1512 5362 2713 60

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1609

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

- ☐ Agent
- ☐ Addressee

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C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
- If YES, enter delivery address below: ☐ No

3. Service Type

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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
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- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

PULMUONE FOODS USA, INC.

Street and Apt. No., Box or Rte.

2315 MOORE AVENUE

City, State, ZIP+4®

FULLERTON CA 92833

Postmark
Here

Rojas v. Pulmuone
Foods USA, Inc.

UNITED STATES POSTAGE
 PITNEY BOWES
 \$007.93
 02 1P
 0000666553 FEB 16 2021
 MAILED FROM ZIP CODE 90067



SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:

PULMUONE U.S.A., INC.
 2315 MOORE AVE
 FULLERTON CA 92833



9590 9402 1512 5362 2713 77

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1616

PS Form 3811, July 2015 PSN 7530-02-000-9053

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X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery (r \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CERTIFIED MAIL®



7020 1290 0001 8879 1616

PULMUONE U.S.A., INC.
 2315 MOORE AVE
 FULLERTON CA 92833

U.S. Postal Service™
 CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
 \$ 3.50
 Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 2.80
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
 \$ 1.63
 Total Postage and Fees
 \$ 7.93

Sent To
 Street and Apt. No., or P.O. Box No.
 City, State, ZIP+4®
 PULMUONE U.S.A., INC.
 2315 MOORE AVE
 FULLERTON CA 92833

Postmark
 Here

Rojas v. Pulmuone
 U.S.A., Inc

PS Form 3800, April 2015 PSN 7530-02-003-9047

See Reverse for Instructions

one
 AW APC
 Park East, Ste 1000
 CA 90067

CERTIFIED MAIL



7020 1290 0001 8879 1623

one
AW APC
Park East, Ste 1000
CA 90067

NASOYA FOODS USA, LLC
1 NEW ENGLAND WAY
AYER MA 01432

7020 1290 0001 8879 1623

U.S. Postal Service TM CERTIFIED MAIL [®] RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com .	
OFFICIAL USE	
Certified Mail Fee \$ 3.50	Postmark Here Rojas v. Nasoya Foods USA, LLC
Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy) \$ 2.80	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$ 1.63	
Total Postage and Fees \$ 7.93	
Sent To NASOYA FOODS USA, LLC Street and Apt. No., or PO Box No. 1 NEW ENGLAND WAY City, State, ZIP+4 [®] AYER MA 01432	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



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1. Article Addressed to:

NASOYA FOODS USA, LLC
1 NEW ENGLAND WAY
AYER MA 01432



9590 9402 1512 5362 2713 84

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1623

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail[®]
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express[®]
- ☐ Registered MailTM
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature ConfirmationTM
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NASOYA FOODS USA, LLC
1 NEW ENGLAND WAY
AYER MA 01432



9590 9402 1512 5362 2713 84

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1623

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature] ☒ Agent ☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3/11/21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail (over \$500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **June 25, 2021**, I served the document described as: **NOTICE OF PLAINTIFF MARTIN ASENCION ROJAS' POSTING OF JURY FEES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Jason A. Geller (SBN 168149)
jgeller@fisherphillips.com
Brandon K. Kahoush (SBN 311560)
bkahoush@fisherphillips.com
Nina Montazeri (SBN 329440)
nmontazeri@fisherphillips.com
FISHER & PHILLIPS LLP
One Embarcadero Center, Suite 2050
San Francisco, California 94111
Telephone: (415) 490-9000
Facsimile: (415) 490-9001

Attorneys for Defendant
PULMUONE FOODS USA, INC.,
PULMUONE U.S.A., INC., and NASOYA
FOODS USA, LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 25, 2021**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name


Signature