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FILED
ALAMEDA COUNTY

MAY 21 2021

CLERK OF THE SUPERIOR COURT

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11 ALFONSO RAMIREZ-VIVAR,
12 individually, and on behalf of other
13 members of the general public similarly
situated,

14 Plaintiff,

15 vs.

16 GRIFOLS DIAGNOSTIC SOLUTIONS
17 INC., a Delaware corporation; GRIFOLS
18 SHARED SERVICES NORTH AMERICA,
INC., a Virginia corporation; and DOES 1
through 10, inclusive,

19 Defendants.

Case No.: RG21089519

**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 Labor Code, Pursuant to PAGA, §§ 2698, et seq.;
(10) Violation of California Business &

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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 Alfonso Ramirez-Vivar, individually and on behalf of all other members of
2 the public similarly situated, and other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

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

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

within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendant GRIFOLS DIAGNOSTIC SOLUTIONS INC. filed Statement of Information forms with the California Secretary of State designating a principal place of business in Emeryville, County of Alameda, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

THE PARTIES

4. Plaintiff ALFONSO RAMIREZ-VIVAR is a resident of Oceanside, in San Diego County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Material Handler II from approximately January 2017 to October 2020. Plaintiff worked for Defendants at their warehouse in San Diego, California. During his employment, Plaintiff typically worked eight (8) hours or more per day, and five (5) or more days per week. Plaintiff's primary job duties included, without limitation, collecting and organizing product, packing shipments, assuring shipping orders were delivered to carriers, and maintaining the warehouse premises.

5. GRIFOLS DIAGNOSTIC SOLUTIONS INC. was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

6. GRIFOLS SHARED SERVICES NORTH AMERICA, INC. was and is, upon information and belief, a Virginia corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to

1 amend the complaint and serve such fictitiously named Defendants once their names and
2 capacities become known.

3 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
4 were the partners, agents, owners, or managers of GRIFOLS DIAGNOSTIC SOLUTIONS
5 INC. and GRIFOLS SHARED SERVICES NORTH AMERICA, INC., at all relevant times.

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

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

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

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

1 common-law employment relationship. As joint employers of Plaintiff and class members,
2 Defendants are jointly and severally liable for the civil penalties and all other relief available
3 to Plaintiff and class members under the law.

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

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

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

25 15. GRIFOLS DIAGNOSTIC SOLUTIONS INC.; GRIFOLS SHARED
26 SERVICES NORTH AMERICA, INC.; and/or DOES 1 through 10 are therefore alter egos of
27 each other.

28 16. Adherence to the fiction of the separate existence of Defendants would permit

1 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
2 from liability for the wrongful acts committed by them under the name GRIFOLS.

3 17. Plaintiff further alleges, upon information and belief, that Defendants
4 GRIFOLS DIAGNOSTIC SOLUTIONS INC. and GRIFOLS SHARED SERVICES NORTH
5 AMERICA, INC are alter egos of each other for the following reasons:

- 6 (a) On the California Secretary of State’s website
7 (<https://businesssearch.sos.ca.gov/>), GRIFOLS DIAGNOSTIC
8 SOLUTIONS INC. and GRIFOLS SHARED SERVICES NORTH
9 AMERICA, INC. share the same agent for service of process, “CT
10 CORPORATION SYSTEM;”
11 (b) On Grifols, S.A.’s SEC 20-F filing for 2019, GRIFOLS DIAGNOSTIC
12 SOLUTIONS INC. and GRIFOLS SHARED SERVICES NORTH
13 AMERICA, INC. are listed as direct subsidiaries of Grifols, S.A.; and
14 (c) On information and belief, GRIFOLS DIAGNOSTIC SOLUTIONS
15 INC. and GRIFOLS SHARED SERVICES NORTH AMERICA, INC.
16 utilize the same standardized employment forms and issue the same
17 employment policies.

18 **GENERAL ALLEGATIONS**

19 18. Defendants are a global healthcare company focused on biosciences, medical
20 diagnostics, biological supplies, and medical devices. Upon information and belief,
21 Defendants maintain a single, centralized Human Resources (“HR”) department at their
22 company headquarters in Emeryville or Los Angeles, California which is responsible for the
23 recruiting and hiring of new employees, and communicating and implementing Defendants’
24 company-wide policies, including timekeeping policies and meal and rest period policies, to
25 employees throughout California.

26 19. In particular, Plaintiff and class members, on information and belief, received
27 the same standardized documents and/or written policies. Upon information and belief, the
28 usage of standardized documents and/or written policies, including new-hire documents,

1 indicate that Defendants dictated policies at the corporate level and implemented them
2 company-wide, regardless of their employees' assigned locations or positions. Upon
3 information and belief, Defendants set forth uniform policies and procedures in several
4 documents provided at an employee's time of hire.

5 20. Upon information and belief, Defendants maintain a centralized Payroll
6 department at their company headquarters in Emeryville or Los Angeles, California which
7 processes payroll for all non-exempt, hourly paid employees working for Defendants at their
8 various locations and jobsites in California, including Plaintiff and class members. Based
9 upon information and belief, Defendants issue the same formatted wage statements to all non-
10 exempt, hourly paid employees in California, irrespective of their work locations. Upon
11 information and belief, Defendants process payroll for departing employees in the same
12 manner throughout the State of California, regardless of the manner in which each employee's
13 employment ends.

14 21. Defendants continue to employ non-exempt or hourly paid employees in
15 California.

16 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
18 and advisors knowledgeable about California labor and wage law, employment and personnel
19 practices, and about the requirements of California law.

20 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
21 members were not paid for all hours worked because all hours worked were not recorded.

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

26 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to be paid at a regular rate
28 of pay, and corresponding overtime rate of pay, that included as eligible income all

1 remuneration required by law, including but not limited to, all income derived from incentive
2 pay, fringe benefit pay, nondiscretionary bonuses, and/or other forms of compensation.

3 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive at least minimum
5 wages for compensation and that they were not receiving at least minimum wages for work
6 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
7 and class members were not paid at least minimum wages for work done off-the-clock.

8 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to meal periods in
10 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
11 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
12 periods and that Plaintiff and class members were not provided with all meal periods or
13 payment of one (1) additional hour of pay at their regular rates of pay when they did not
14 receive a timely, uninterrupted, thirty (30) minute meal period.

15 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to rest periods in
17 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
18 additional hour of pay at their regular rates of pay when they were not authorized and
19 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
20 and class members were not authorized and permitted to take compliant rest periods, nor did
21 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
22 pay at their regular rates of pay when they were not authorized and permitted to take a
23 compliant rest period.

24 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive complete and
26 accurate wage statements in accordance with California law. In violation of the California
27 Labor Code, Plaintiff and class members were not provided complete and accurate wage
28 statements.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that they had a duty to maintain accurate and complete payroll records in
3 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
4 and intentionally failed to do so.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to timely payment of all
7 wages earned upon termination of employment. In violation of the California Labor Code,
8 Plaintiff and class members did not receive payment of all wages due, including, but not
9 limited to, overtime wages, minimum wages, sick leave pay, and/or meal and rest periods,
10 within permissible time periods.

11 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to timely payment of wages
13 during their employment. In violation of the California Labor Code, Plaintiff and class
14 members did not receive payment of all wages, including, but not limited to, overtime wages,
15 minimum wages, sick leave pay, and/or meal and rest period premiums, within permissible
16 time periods.

17 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive sick leave
19 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
20 derived from incentive pay, fringe benefit pay, nondiscretionary bonuses, and/or other forms
21 of compensation.

22 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive full
24 reimbursement for all business-related expenses and costs they incurred during the course and
25 scope of their employment and that they did not receive full reimbursement of applicable
26 business-related expenses and costs incurred.

27 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that they had a duty to compensate

1 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
2 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
3 falsely represented to Plaintiff and class members that they were properly denied wages, all in
4 order to increase Defendants' profits.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

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

26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(a) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The LWDA shall notify the employer and the aggrieved employee or
2 representative by certified mail that it does not intend to investigate the
3 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
4 the postmark date of the aggrieved employee’s notice. Upon receipt of
5 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
6 (65) calendar days of the postmark date of the aggrieved employee’s
7 notice, the aggrieved employee may commence a civil action pursuant
8 to California Labor Code section 2699 to recover civil penalties.

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

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated (other than those listed in Section 2699.5), including the
17 facts and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(c) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33)
22 calendar days of the postmark date of the notice sent by the aggrieved
23 employee or representative. The employer shall give written notice
24 within that period of time by certified mail to the aggrieved employee or
25 representative and by online filing with the LWDA if the alleged
26 violation is cured, including a description of actions taken, and no civil
27 action pursuant to Section 2699 may commence. If the alleged violation
28 is not cured within the 33-day period, the aggrieved employee may

1 commence a civil action pursuant to Section 2699.

2 41. On March 3, 2021, Plaintiff provided written notice by online filing to the
3 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff’s written
6 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
7 LWDA PAGA Administrator confirmed receipt of Plaintiff’s written notice and assigned
8 Plaintiff PAGA Case Number LWDA-CM-823375-21. A true and correct copy of Plaintiff’s
9 written notice to the LWDA and Defendants is attached hereto as “Exhibit 1.”

10 42. As of the filing date of this complaint, over 65 days have passed since Plaintiff
11 sent the notice described above to the LWDA, and the LWDA has not responded that it
12 intends to investigate Plaintiff’s claims and Defendants have not cured the violations.

13 43. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
15 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
16 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 246 and 2802.

17 44. Labor Code section 558(a) provides “[a]ny employer or other person acting on
18 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
19 provision regulating hours and days of work in any order of the Industrial Welfare
20 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
21 dollars (\$50) for each underpaid employee for each pay period for which the employee was
22 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
23 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
24 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
25 to any other civil or criminal penalty provided by law.”

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

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

47. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 246 and 2802.

CLASS ACTION ALLEGATIONS

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

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

50. Plaintiff's proposed class consists of and is defined as follows:

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

51. Plaintiff's proposed subclass consists of and is defined as follows:

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

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

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

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

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

55. 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

1 be necessarily expended for the prosecution of this action for the
2 substantial benefit of each class member.

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

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

18 **FIRST CAUSE OF ACTION**

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

20 **(Against all Defendants)**

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

23 57. Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable wage order. California Labor Code
25 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
26 be the . . . standard conditions of labor for employees. The employment of any employee . . .
27 under conditions of labor prohibited by the order is unlawful.”

28 58. California Labor Code section 1198 and the applicable IWC Wage Order

1 provide that it is unlawful to employ persons without compensating them at a rate of pay
2 either time-and-one-half or two-times that person's regular rate of pay, depending on the
3 number of hours worked by the person on a daily or weekly basis.

4 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
5 were required to pay Plaintiff and class members working more than eight (8) hours in a day
6 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
7 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
8 workweek.

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

14 61. California Labor Code section 510 codifies the right to overtime compensation
15 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
16 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
17 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
18 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
19 in a day on the seventh (7th) day of work.

20 62. During the relevant time period, Defendants willfully failed to pay all overtime
21 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
22 class members were not paid overtime premiums for all of the hours they worked in excess of
23 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
24 hours in a week, because all hours worked were not recorded.

25 63. Upon information and belief, Defendants had, and continue to have, a
26 company-wide policy and/or practice of strictly staffing their facilities based on the labor
27 hours allocated by corporate for each location. Defendants' uniform use of labor budgets,
28 combined with production deadlines, resulted in understaffing and a failure to provide

1 Plaintiff and class members with adequate meal period coverage. Defendants also had a
2 practice of failing to adhere to a schedule of meal periods, which further caused Plaintiff and
3 class members to not be relieved of their duties for compliant meal periods. As a result of this
4 lack of meal period coverage, Plaintiff and class members were not always afforded 30-minute
5 meal periods during shifts when they were entitled to receive a meal period.

6 64. Additionally, upon information and belief, because Defendants frowned upon
7 employees accruing meal period penalties, Defendants pressured Plaintiff and class members
8 to clock out for meal periods and/or adjusted employee time records to reflect compliant meal
9 periods, regardless of whether they had received a compliant meal period, in order to strictly
10 limit meal penalties that Defendants would otherwise owe. For example, Plaintiff was
11 pressured by Defendants' management to clock out and record compliant meal periods on
12 shifts when he had not, in fact, received a compliant meal period.

13 65. Defendants also had a policy and/or practice of requiring that Plaintiff and class
14 members carry a company-issued radio at all times in order to respond to calls from
15 supervisors and management, even during unpaid meal periods. Defendants' supervisors and
16 management contacted Plaintiff and class members on their radios during their meal periods to
17 discuss work-related matters. For example, approximately five (5) times per week,
18 Defendants' management would interrupt Plaintiff's meal periods in-person or via radio, for
19 3-5 minutes per instance, to discuss prior and upcoming shipping orders or to instruct Plaintiff
20 to assist other employees with a production line or complete other work-related tasks.
21 Defendants knew or should have known that Plaintiff and class members were being made to
22 communicate with their supervisors while off-the-clock in order to meet Defendants'
23 expectations, but Defendants failed to compensate Plaintiff and class members for this off-the-
24 clock work.

25 66. Defendants knew or should have known that as a result of these company-wide
26 practices and/or policies, Plaintiff and class members were performing their assigned duties
27 off-the-clock during meal periods, and were suffered or permitted to perform work for which
28 they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours a

1 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for
2 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages
3 for all of the overtime hours they actually worked.

4 67. Furthermore, Defendants did not pay Plaintiff and class members the correct
5 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
6 wage, Defendants paid Plaintiff and class members incentive pay, fringe benefit pay,
7 nondiscretionary bonuses, and/or other forms of compensation. However, in violation of the
8 California Labor Code, Defendants failed to incorporate all compensation, including but not
9 limited to, incentive pay, fringe benefit pay, and nondiscretionary bonuses, into the calculation
10 of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,
11 during times when Plaintiff and class members worked overtime and received these other
12 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
13 than required.

14 68. Specifically, Defendants paid Plaintiff and class members incentive pay and
15 nondiscretionary bonuses related to the company and Plaintiff meeting certain performance
16 metrics. Defendants also paid Plaintiff and class members fringe benefit pay. On information
17 and belief, some of these nondiscretionary bonuses and/or incentive payments were listed on
18 Plaintiff's and class members' wage statements as "Bonus Perf Pay," "HLG Bonus Plan,"
19 "Disc Bonus," and "Spot Award," and fringe benefit payments were listed on Plaintiff's and
20 class members' wage statements as "Non Cash Fringe." During pay periods that Plaintiff and
21 class members were paid overtime wages, Defendants failed to incorporate the incentive pay,
22 fringe benefit pay, and/or nondiscretionary bonuses into Plaintiff's and class members' regular
23 rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours
24 worked. Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly rate
25 of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate
26 the overtime rates of pay based on all remuneration paid has resulted in an underpayment of
27 overtime wages to Plaintiff and class members on a company-wide basis.

28 69. Defendants' failure to pay Plaintiff and class members the balance of overtime

1 compensation as required by California law, violates the provisions of California Labor Code
2 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
3 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
4 and attorneys' fees.

5 **SECOND CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 7 **Minimum Wages** 8 **(Against all Defendants)**

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

11 71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
12 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
13 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
14 fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time
15 during which an employee is subject to the control of an employer, and includes all the time
16 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
17 Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

18 72. As set forth above, on information and belief, due to Defendants' company-
19 wide practice of utilizing labor budgets and production deadlines, failure to adhere to a
20 schedule of meal periods, and subsequent lack of meal period coverage, Plaintiff and class
21 members were impeded from taking all uninterrupted meal periods to which they were entitled
22 and were required to work off-the-clock. Additionally, as set forth above, on information and
23 belief, Defendants systematically failed to pay Plaintiff and class members for actual hours
24 worked during unpaid meal periods, because these hours were not always correctly recorded.
25 Furthermore, as stated above, Defendants required Plaintiff and class members to respond to
26 in-person and radio communications from supervisors while off-the-clock, but did not
27 compensate them for this time.

28 73. Thus, Defendants did not pay minimum wages for off-the-clock hours that

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

5 74. Defendants' failure to pay Plaintiff and class members minimum wages violates
6 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
7 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
8 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

9 **THIRD CAUSE OF ACTION**

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

11 **Violations**

12 **(Against all Defendants)**

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

15 76. At all relevant times herein set forth, California Labor Code section 512(a)
16 provides that an employer may not require, cause, or permit an employee to work for a period
17 of more than five (5) hours per day without providing the employee with a meal period of not
18 less than thirty (30) minutes, except that if the total work period per day of the employee is
19 not more than six (6) hours, the meal period may be waived by mutual consent of both the
20 employer and the employee. Under California law, first meal periods must start after no more
21 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
22 2012).

23 77. At all relevant times herein set forth, California Labor Code sections 226.7,
24 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
25 meal period mandated by an applicable order of the IWC.

26 78. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
27 the applicable IWC Wage Order also require employers to provide a second meal period of
28 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an

1 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
2 hours worked is no more than twelve (12) hours, the second meal period may be waived by
3 mutual consent of the employer and the employee only if the first meal period was not waived.

4 79. As stated, upon information and belief, Defendants had, and continue to have, a
5 company-wide policy and/or practice of understaffing their locations due to labor budgeting
6 and assigning strict production deadlines. These company-wide practices, combined with the
7 failure to adhere to a schedule of meal periods, resulted in a lack of meal period coverage and
8 prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to
9 which they were entitled. For example, Defendants enforced certain production deadlines,
10 which required that biological material to be organized and packed for shipping within
11 specific timeframes, which would vary according to the specific materials that were being
12 handled. These production deadlines were based on the temperature-sensitive nature of the
13 biological materials, and Plaintiff and class members were required to adhere to these
14 deadlines or risk damaging the materials. Adherence to these strict deadlines resulted in
15 Plaintiff and class members having missed, late, and/or interrupted meal periods because there
16 were not enough employees on duty to handle the time-sensitive workload.

17 80. Additionally, as stated, because Defendants frowned upon employees accruing
18 meal period penalties, Defendants' management would adjust Plaintiff's and class members'
19 time records and/or pressured employees to clock out for meal periods to reflect compliant
20 meal periods, regardless of whether they had received a compliant meal period, in order to
21 strictly limit meal penalties that would need to be paid by Defendants. For example, Plaintiff
22 was explicitly instructed by Defendants' management to clock out and continue working any
23 time he was unable to take a compliant meal period. Furthermore, as stated, Defendants had,
24 and continue to have, a policy and/or practice of requiring that Plaintiff and class members
25 carry and respond to company-issued radios at all times, including during meal periods. As a
26 result, Plaintiff's and class members' meal periods were interrupted by Defendants'
27 management discussing shipping assignments and work-related matters in person or via
28 radios.

1 81. Defendants' practices and policies prevented Plaintiff and class members from
2 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
3 members would be forced to work in excess of five (5) hours before taking a meal period and,
4 at times, had their meal periods interrupted and/or had to forgo their meal periods altogether.
5 For example, as stated, five (5) times per week, Defendants' management would interrupt
6 Plaintiff's meal periods for 3-5 minutes per instance to discuss and assign tasks to him in
7 order to ensure he was meeting Defendants' expectations. As a further example, three (3)
8 times per week, Plaintiff was forced to take his meal period after his fifth (5th) hour of work
9 to comply with production deadlines and due to a lack of meal period coverage. Plaintiff and
10 class members did not sign valid meal period waivers on days that they were entitled to meal
11 periods and were not relieved of all duties.

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

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

84. Defendants’ conduct violates the applicable IWC Wage Order, and California 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)

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

86. 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.

87. 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 (3½) hours.

88. 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

1 that a required rest period was not authorized and permitted.

2 89. During the relevant time period, Defendants regularly failed to authorize and
3 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
4 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
5 practices, including utilizing labor budgets and production deadlines, prevented Plaintiff and
6 class members from being relieved of all duty to take rest periods. Additionally, Defendants
7 failed to adhere to a schedule of rest periods, which, coupled with Defendants' failure to
8 provide adequate rest period coverage, further led to Plaintiff and class members not being
9 authorized and permitted to take compliant rest periods. Moreover, Defendants had, and
10 continue to have, a policy and/or practice of requiring that Plaintiff and class members carry a
11 company-issued radio to respond to management at all times, including during rest periods.

12 90. Furthermore, upon information and belief, Defendants maintained and
13 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
14 and class members remain on the work premises during their rest periods. Because Plaintiff
15 and class members were restricted from leaving Defendants' premises during rest periods,
16 they were denied the ability to use their rest periods freely for their own purposes. Thus,
17 Defendants effectively maintained control over Plaintiff and class members during rest
18 periods.

19 91. As a result of Defendants' practices and policies, Plaintiff and class members
20 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
21 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
22 Plaintiff was forced to forego his rest periods three (3) times per week due to a lack of rest
23 period coverage and in order to comply with Defendants' production deadlines. As a further
24 example, 1-2 times per week, Defendants' management would interrupt Plaintiff's rest periods
25 for five (5) minutes per instance to discuss pending shipping orders.

26 92. Defendants have also engaged in a company-wide practice and/or policy of not
27 paying rest period premiums owed when compliant rest periods are not authorized and
28 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members

one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums because Defendants failed to include all forms of compensation, such as incentive pay, fringe benefit pay, nondiscretionary bonuses, and/or other forms of compensation, 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 sections 226.7, 516, and the applicable IWC Wage Order.

93. 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)

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

95. 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.

96. 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

1 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
2 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

12 98. Moreover, because Defendants did not calculate Plaintiff's and Subclass
13 members' regular rate of pay correctly for purposes of paying overtime and paid sick leave,
14 Defendants did not list the correct amount of gross wages earned by Plaintiff and Subclass
15 members in compliance with section 226(a)(1). For the same reason, Defendants failed to list
16 the correct amount of net wages earned by Plaintiff and Subclass members in violation of
17 section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect
18 during the pay period, namely, correct overtime rates of pay and correct rates of pay for
19 premium wages, in violation of section 226(a)(9).

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

28 100. California Labor Code section 1198 provides that the maximum hours of work

1 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
2 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
3 employment of any employees for longer hours than those fixed by the order or under
4 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
5 Wage Order, employers are required to keep accurate time records showing when the
6 employee begins and ends each work period and meal period. During the relevant time
7 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
8 and meal period start and stop times for Plaintiff and Subclass members, in violation of
9 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
10 falsifying Plaintiff’s and Subclass members’ time records by recording that compliant meal
11 periods were taken regardless of if or when meal periods were actually taken, and thereby
12 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.

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

23 102. Plaintiff and Subclass members are entitled to recover from Defendants the
24 greater of their actual damages caused by Defendants’ failure to comply with California Labor
25 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
26 employee.

27 **SIXTH CAUSE OF ACTION**

28 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**

Termination
(Against all Defendants)

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

104. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, sick leave pay, and/or meal and rest period premiums that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

105. At all times relevant herein set forth, Labor Code sections 201 and 202 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.

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

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

SEVENTH CAUSE OF ACTION

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

Employment
(Against all Defendants)

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

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

110. 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.

111. 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.

112. 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.

113. 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, sick leave pay, and/or meal and rest period premiums within the time periods specified by California Labor Code section 204.

114. Defendants' failure to pay Plaintiff and class members all wages due violates

1 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
2 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

3 **EIGHTH CAUSE OF ACTION**

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

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

8 116. At all times herein set forth, California Labor Code section 2802 provides that
9 an employer must reimburse employees for all necessary expenditures and losses incurred by
10 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
11 to prevent employers from passing off their cost of doing business and operating expenses on
12 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
13 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w]hen tools or
14 equipment are required by the employer or are necessary to the performance of a job, such
15 tools and equipment shall be provided and maintained by the employer, except that an
16 employee whose wages are at least two (2) times the minimum wage provided herein may be
17 required to provide and maintain hand tools and equipment customarily required by the trade
18 or craft.”

19 117. During the relevant time period, Defendants had a company-wide policy of
20 requiring Plaintiff and class members to utilize their own personal cellular phones to carry out
21 their job duties, but failed to reimburse them for the costs of their work-related cellular phone
22 expenses. Plaintiff and class members were required to use their personal cellular phones to
23 fulfill their work-related responsibilities, such as responding to phone calls from Defendants’
24 management. For example, because Plaintiff’s work duties would not always allow him to be
25 within radio signal range of his supervisor, Plaintiff would spend up to 30 minutes per day
26 responding to phone calls from his supervisor requesting updates regarding shipping orders.
27 Although Defendants required Plaintiff and class members to utilize their personal cellular
28 phones to carry out their work-related responsibilities, Defendants failed to reimburse them

1 for this cost.

2 118. Defendants could have provided Plaintiff and class members with the actual
3 tools for use on the job, such as company phones, or reimbursed employees for the costs of
4 their cellular phone usage. Instead, Defendants passed these operating costs off onto Plaintiff
5 and class members. At all relevant times, Plaintiff did not earn at least two (2) times the
6 minimum wage.

7 119. Defendants' company-wide policy and/or practice of passing on their operating
8 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
9 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
10 business-related expenses and costs.

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

14 **NINTH CAUSE OF ACTION**

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

16 **(Against all Defendants)**

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

19 122. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
20 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
21 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
22 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802. Labor Code
23 section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties
24 for violations of those Labor Code sections not found in section 2699.5, including sections
25 516, and 1182.12.

26 123. Defendants' conduct, as alleged herein, violates numerous sections of the
27 California Labor Code, including, but not limited to, the following:

28 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC

1 wage order for Defendants' failure to compensate Plaintiff and other
2 aggrieved employees with all required overtime pay and failure to
3 properly calculate the overtime rates paid to Plaintiff and other
4 aggrieved employees, as alleged herein;

5 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
6 and the applicable IWC wage order for Defendants' failure to
7 compensate Plaintiff and other aggrieved employees with at least
8 minimum wages for all hours worked, as alleged herein;

9 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
10 applicable IWC wage order for Defendants' failure to provide Plaintiff
11 and other aggrieved employees with meal periods, as alleged herein;

12 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
13 IWC wage order for Defendants' failure to authorize and permit
14 Plaintiff and other aggrieved employees to take rest periods, as alleged
15 herein;

16 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
17 wage order for failure to provide accurate and complete wage statements
18 to Plaintiff and other aggrieved employees, as alleged herein;

19 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
20 IWC wage order for failure to maintain payroll records as alleged
21 herein;

22 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
23 earned wages upon termination, as alleged herein;

24 (h) Violation of Labor Code section 204 for failure to pay all earned wages
25 during employment, as alleged herein;

26 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
27 and other aggrieved employees for all business expenses necessarily
28 incurred, as alleged herein; and

(j) Violation of Labor Code section 246 for failure to provide written notice of paid sick leave available, or paid time off.

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* – Unlawful Business Practices (Against all Defendants)

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

125. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

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

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

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

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Order, and paying Plaintiff and class members overtime at a lower rate than required by law by failing to properly calculate the regular rate of pay for purposes of overtime, as

alleged herein;

- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;
- (g) Failing to properly calculate the sick leave paid to Plaintiff and class members in violation of Labor Code section 246(l), as set forth below; and
- (h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

129. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or

1 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
2 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
3 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in
4 the same manner as the regular rate of pay for the workweek in which the employee uses paid
5 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)
6 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's
7 total wages, not including overtime premium pay, by the employee's total hours worked in the
8 full pay periods of the prior 90 days of employment."

9 130. During the relevant time period, Defendants did not pay Plaintiff and class
10 members the correct sick leave rates of pay. As stated, in addition to an hourly wage,
11 Defendants paid Plaintiff and class members incentive pay, fringe benefit pay,
12 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
13 California Labor Code, Defendants failed to incorporate all remunerations, including incentive
14 pay, fringe benefit pay, and/or nondiscretionary bonuses, into the calculation of the regular
15 rate of pay for purposes of calculating the sick leave rate. Therefore, during times when
16 Plaintiff and class members took sick leave and received these other forms of pay, Defendants
17 failed to pay all sick leave benefits by paying a lower sick leave rate than required.
18 Specifically, Defendants paid Plaintiff and class members sick leave based on their hourly rate
19 of pay instead of their regular rate of pay.

20 131. For example, during the pay period ending March 24, 2018, Plaintiff took 8.00
21 hours of sick leave and earned \$958.11 in incentive pay or nondiscretionary bonuses during
22 the same pay period. However, Defendants paid Plaintiff's sick leave rate based on his hourly
23 rate of \$16.7900 instead of his regular rate of pay. Defendants' failure to properly calculate
24 the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of
25 sick leave benefits to Plaintiff and class members on a company-wide basis in violation of
26 Labor Code 246(l).

27 132. As a result of the violations of California law herein described, Defendants
28 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members

1 have suffered pecuniary loss by Defendants’ unlawful business acts and practices alleged
2 herein.

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

9 **ELEVENTH CAUSE OF ACTION**

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

11 **Unfair Business Practices**

12 **(Against all Defendants)**

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

15 135. Defendants are “persons” as defined by California Business & Professions
16 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
17 and/or associations.

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

23 137. Defendants’ activities, namely Defendants’ company-wide practice and/or
24 policy of not paying Plaintiff and class members all meal and rest period premium wages due
25 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
26 compensation guarantee and enhanced enforcement implemented by section 226.7. The
27 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
28 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*

1 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
2 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
3 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
4 unfair business practice in violation of California Business & Professions Code sections
5 17200, *et seq.* (*Id.*)

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

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

17 **REQUEST FOR JURY TRIAL**

18 Plaintiff requests a trial by jury.

19 **PRAYER FOR RELIEF**

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

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

25 **Class Certification**

26
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 applicable IWC Wage Orders 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 by willfully failing to pay
17 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

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

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

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

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

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

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

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

As to the Fourth Cause of Action

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

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

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

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

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

28. For attorneys' fees pursuant to California Code of Civil Procedure section 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 applicable IWC Wage Orders 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, sick leave pay, 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
6 overtime wages, minimum wages, sick leave pay, and/or meal and rest period premiums,
7 during their employment;

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

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

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

14 46. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

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

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

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

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

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

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

28 52. For attorneys' fees and costs pursuant to California Labor Code section

1 2802(c), or as otherwise provided by law; and

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

4 **As to the Ninth Cause of Action**

5 54. That the Court declare, adjudge and decree that Defendants violated the
6 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
7 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
8 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
9 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
10 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
11 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
12 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
13 employment); 2802 (by failing to reimburse business expenses); and 246 (by failing to
14 properly calculate sick leave);

15 55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
16 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
17 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
18 1197.1, 1198, 2802, and 246;

19 56. For attorneys' fees and costs pursuant to California Labor Code section
20 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
21 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
22 1194, 1197, 1197.1, 1198, 2802, and 246;

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

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

26 **As to the Tenth Cause of Action**

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

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

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

11 61. For the appointment of a receiver to receive, manage and distribute any and all
12 funds disgorged from Defendants and determined to have been wrongfully acquired by
13 Defendants as a result of violations of California Business & Professions Code sections
14 17200, *et seq.*;

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

17 63. For such other and further relief as the Court may deem equitable and
18 appropriate.
19

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

21 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
22 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
23 an unfair business practice in violation of California Business and Professions Code sections
24 17200, *et seq.*;

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

28 66. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections 17200
3 *et seq.*;

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

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

7 69. For such other and further relief as the Court may deem equitable and
8 appropriate.

9
10 Dated: May 13, 2021

Respectfully submitted,

11 Capstone Law APC

12
13 By: 

14 Mark A. Ozzello

Brandon K. Brouillette

15 Joseph Hakakian

16 Attorneys for Plaintiff Alfonso Ramirez-Vivar
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EXHIBIT 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 3, 2021

VIA ONLINE SUBMISSION

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

Subject: *Alfonso Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*

Dear PAGA Administrator:

This office represents Alfonso Ramirez-Vivar in connection with his claims under the California Labor Code. Mr. Ramirez-Vivar was an employee of GRIFOLS DIAGNOSTIC SOLUTIONS, INC. and/or GRIFOLS SHARED SERVICES NORTH AMERICA, INC. For the purpose of this letter, Mr. Ramirez-Vivar collectively refers to these entities as “GRIFOLS.”

The employers may be contacted directly at the addresses below:

GRIFOLS DIAGNOSTIC SOLUTIONS, INC.
4560 HORTON STREET
EMERYVILLE CA 94608

GRIFOLS SHARED SERVICES NORTH AMERICA, INC.
2410 LILLYVALE AVE
LOS ANGELES CA 90032

Mr. Ramirez-Vivar 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. Ramirez-Vivar seeks relief on behalf of himself, the State of California, and other persons who are or were employed by GRIFOLS 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.

GRIFOLS employed Mr. Ramirez-Vivar as an hourly paid, non-exempt employee from approximately January 2017 to October 2020. Mr. Ramirez-Vivar worked for GRIFOLS as a Material Handler II at its warehouse located in San Diego, California. During his employment, Mr. Ramirez-Vivar typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time Mr. Ramirez-Vivar’s employment with GRIFOLS ended, he earned approximately

\$17.81 per hour. His job duties included, without limitation, collecting and organizing product, packing shipments, assuring shipping orders were delivered to carriers, and maintaining the warehouse premises.

GRIFOLS committed one or more of the following Labor Code violations against Mr. Ramirez-Vivar, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

GRIFOLS’s Company-Wide and Uniform Payroll and HR Practices

GRIFOLS DIAGNOSTIC SOLUTIONS, INC. and GRIFOLS SHARED SERVICES NORTH AMERICA, INC. are a Delaware corporation and a Virginia corporation, respectively. GRIFOLS is a global healthcare company focused on biosciences, medical diagnostics, biological supplies, and medical devices. Upon information and belief, GRIFOLS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Emeryville or Los Angeles, California, for all non-exempt, hourly paid employees working for GRIFOLS in California, including Mr. Ramirez-Vivar and other aggrieved employees. At all relevant times, GRIFOLS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Ramirez-Vivar and other aggrieved employees, regardless of its location or position.

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

¹ These facts, theories, and claims are based on Mr. Ramirez-Vivar’s experience and counsel’s review of those records currently available relating to Mr. Ramirez-Vivar’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. Ramirez-Vivar 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.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

GRIFOLS willfully failed to pay all overtime wages owed to Mr. Ramirez-Vivar and other aggrieved employees. During the relevant time period, Mr. Ramirez-Vivar 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.

Upon information and belief, GRIFOLS had, and continues to have, a company-wide policy and/or practice of strictly staffing its facilities based on the labor hours allocated by corporate for each location. GRIFOLS's uniform use of labor budgets, combined with production deadlines, resulted in understaffing and a failure to provide Mr. Ramirez-Vivar and other aggrieved employees with adequate meal period coverage. GRIFOLS also had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Ramirez-Vivar and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Ramirez-Vivar and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period.

Additionally, upon information and belief, because GRIFOLS frowned upon employees accruing meal period penalties, GRIFOLS pressured Mr. Ramirez-Vivar 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 GRIFOLS would otherwise owe. For example, Mr. Ramirez-Vivar was pressured by GRIFOLS's management to clock out and record compliant meal periods on shifts when he had not, in fact, received a compliant meal period.

GRIFOLS also had a policy and/or practice of requiring that Mr. Ramirez-Vivar and other aggrieved employees carry a company-issued radio at all times in order to respond to calls from supervisors and management, even during unpaid meal periods. GRIFOLS's supervisors and management contacted Mr. Ramirez-Vivar and other aggrieved employees on their radios during their meal periods to discuss work-related matters. For example, approximately five (5) times per week, GRIFOLS's management would interrupt Mr. Ramirez-Vivar's meal periods in-person or via radio, for 3-5 minutes per instance, to discuss prior and upcoming shipping orders or to instruct Mr. Ramirez-Vivar to assist other employees with a production line or complete other work-related tasks. GRIFOLS knew or should have known that Mr. Ramirez-Vivar and other aggrieved employees were being made to communicate with their supervisors while off-the-clock in order to meet GRIFOLS's expectations, but GRIFOLS failed to compensate Mr. Ramirez-Vivar and other aggrieved employees for this off-the-clock work.

GRIFOLS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Ramirez-Vivar and other aggrieved employees were performing their assigned duties off-the-clock during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Ramirez-Vivar 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. Ramirez-Vivar and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

For example, GRIFOLS paid Mr. Ramirez-Vivar and other aggrieved employees incentive pay and nondiscretionary bonuses related to the company and Mr. Ramirez-Vivar meeting certain performance metrics. GRIFOLS also paid Mr. Ramirez-Vivar and other aggrieved employees fringe benefit pay. On information and belief, some of these nondiscretionary bonuses and/or incentive payments were listed on Mr. Ramirez-Vivar's and other aggrieved employees' wage statements as "Bonus Perf Pay," "HLG Bonus Plan," "Disc Bonus," and "Spot Award," and fringe benefit payments were listed on Mr. Ramirez-Vivar's and other aggrieved employees' wage statements as "Non Cash Fringe." During pay periods that Mr. Ramirez-Vivar and other aggrieved employees were paid overtime wages, GRIFOLS failed to incorporate the incentive pay, fringe benefit pay, and/or nondiscretionary bonuses into Mr. Ramirez-Vivar'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, GRIFOLS paid Mr. Ramirez-Vivar and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. GRIFOLS'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. Ramirez-Vivar and other aggrieved employees on a company-wide basis.

Therefore, Mr. Ramirez-Vivar 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. Ramirez-Vivar 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 set forth above, on information and belief, due to GRIFOLS's company-wide practice of utilizing labor budgets and production deadlines, failure to adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Ramirez-Vivar 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. Additionally, as set forth above, on information and belief, GRIFOLS systematically failed to pay Mr. Ramirez-Vivar and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded.

Furthermore, as stated above, GRIFOLS required Mr. Ramirez-Vivar and other aggrieved employees to respond to in-person and radio communications from supervisors while off-the-clock, but did not compensate them for this time.

Thus, GRIFOLS did not pay for all hours worked by Mr. Ramirez-Vivar and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, GRIFOLS 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, GRIFOLS regularly failed to pay at least minimum wages to Mr. Ramirez-Vivar 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. Ramirez-Vivar 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, upon information and belief, GRIFOLS had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting and assigning strict production deadlines. These company-wide practices, combined with the failure to adhere to a schedule of meal periods, resulted in a lack of meal period coverage and prevented Mr. Ramirez-Vivar and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, GRIFOLS enforced certain production deadlines, which required that biological material to be organized and packed for shipping within specific timeframes, which would vary according to the specific materials that were being handled. These production deadlines were based on the temperature-sensitive nature of the biological materials, and Mr. Ramirez-Vivar and other aggrieved employees were required to adhere to these deadlines or risk damaging the materials. Adherence to these strict deadlines resulted in Mr. Ramirez-Vivar and other aggrieved employees having missed, late, and/or interrupted meal periods because there were not enough employees on duty to handle the time-sensitive workload.

Additionally, as stated, because GRIFOLS frowned upon employees accruing meal period penalties, GRIFOLS's management would adjust Mr. Ramirez-Vivar's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods 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 GRIFOLS. For example, Mr. Ramirez-Vivar was explicitly instructed by GRIFOLS's management to clock out and continue working any time he was unable to take a compliant meal period. Furthermore, as stated, GRIFOLS had, and continues to have, a policy and/or practice of requiring that Mr. Ramirez-Vivar and other aggrieved employees carry and respond to company-issued radios at all times, including during meal periods. As a result, Mr. Ramirez-Vivar's and other aggrieved employees' meal periods were interrupted by GRIFOLS's management discussing shipping assignments and work-related matters in-person or via radio.

GRIFOLS's practices and policies prevented Mr. Ramirez-Vivar and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Ramirez-Vivar 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, as stated, five (5) times per week, GRIFOLS's management would interrupt Mr. Ramirez-Vivar's meal periods for 3-5 minutes per instance to discuss and assign tasks to him in order to ensure he was meeting GRIFOLS's expectations. As a further example, three (3) times per week, Mr. Ramirez-Vivar was forced to take his meal period after his fifth hour of work to comply with production deadlines and due to a lack of meal period coverage.

Moreover, GRIFOLS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Ramirez-Vivar 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, GRIFOLS knew or should have known that, as a result of these policies, Mr. Ramirez-Vivar and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. GRIFOLS further knew or should have known that GRIFOLS did not pay Mr. Ramirez-Vivar and other aggrieved employees all meal period premiums when meal periods were missed, late, shortened, or interrupted.

Furthermore, GRIFOLS 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. Ramirez-Vivar and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that GRIFOLS did pay Mr. Ramirez-Vivar and other aggrieved employees premium pay for missed, late, and interrupted meal periods, GRIFOLS did not pay Mr. Ramirez-Vivar and other aggrieved employees at the correct rate of pay for premiums because GRIFOLS systematically failed to include all forms of compensation, such as incentive pay, fringe benefit pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, GRIFOLS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Ramirez-Vivar 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, GRIFOLS regularly failed to authorize and permit Mr. Ramirez-Vivar 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, GRIFOLS's company-wide practices, including utilizing labor budgets and production deadlines, prevented Mr. Ramirez-Vivar and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, GRIFOLS failed to adhere to a schedule of rest periods, which, coupled with GRIFOLS's failure to provide adequate rest period coverage, further led to Mr. Ramirez-Vivar and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, GRIFOLS had, and continues to have, a policy and/or practice of requiring that Mr. Ramirez-Vivar and other aggrieved employees carry a company-issued radio to respond to management at all times, including during rest periods.

Furthermore, upon information and belief, GRIFOLS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Ramirez-Vivar and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Ramirez-Vivar and other aggrieved employees were restricted from leaving GRIFOLS's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, GRIFOLS effectively maintained control over Mr. Ramirez-Vivar and other aggrieved employees during rest periods.

As a result of GRIFOLS's practices and policies, Mr. Ramirez-Vivar 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. Ramirez-Vivar was forced to forego his rest periods three (3) times per week due to a lack of rest period coverage and in order to comply with GRIFOLS's production deadlines. As a further example, 1-2 times per week, GRIFOLS's management would interrupt Mr. Ramirez-Vivar's rest periods for five (5) minutes per instance to discuss pending shipping orders.

GRIFOLS 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 GRIFOLS did pay Mr. Ramirez-Vivar and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, GRIFOLS did not pay Mr. Ramirez-Vivar and other aggrieved employees at the correct rate of pay for premiums because GRIFOLS failed to include all forms of compensation, such as incentive pay, fringe benefit pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, GRIFOLS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Ramirez-Vivar 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. GRIFOLS has not provided Mr. Ramirez-Vivar 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 \$50.00 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, GRIFOLS has knowingly and intentionally provided Mr. Ramirez-Vivar and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, GRIFOLS issued uniform wage statements to Mr. Ramirez-Vivar 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, GRIFOLS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because GRIFOLS did not record the time Mr. Ramirez-Vivar 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), GRIFOLS did not list the correct amount of gross wages and net wages earned by Mr. Ramirez-Vivar and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, GRIFOLS failed to accurately list the total number of hours worked by Mr. Ramirez-Vivar 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 GRIFOLS did not calculate Mr. Ramirez-Vivar's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, GRIFOLS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, GRIFOLS

also failed to list the correct amount of net wages in violation of section 226(a)(5). GRIFOLS 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), GRIFOLS willfully failed to maintain accurate payroll records for Mr. Ramirez-Vivar 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, GRIFOLS failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Ramirez-Vivar and other aggrieved employees, in violation of section 1198. As stated, GRIFOLS engaged in a company-wide practice and/or policy of falsifying Mr. Ramirez-Vivar’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. Ramirez-Vivar and other aggrieved employees. Furthermore, in light of GRIFOLS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, GRIFOLS kept no records of meal start and end times for second meal periods.

Because GRIFOLS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Ramirez-Vivar 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. Ramirez-Vivar 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. Ramirez-Vivar 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, GRIFOLS failed to pay Mr. Ramirez-Vivar and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, sick leave pay, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Ramirez-Vivar 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.

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

Mr. Ramirez-Vivar 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 § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement

of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, GRIFOLS did not pay other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, GRIFOLS paid other aggrieved employees incentive pay, fringe benefit pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, GRIFOLS failed to incorporate all remunerations, including incentive pay, fringe benefit pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, GRIFOLS failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, GRIFOLS paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

GRIFOLS's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 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."

During the relevant time period, GRIFOLS had a company-wide policy of requiring Mr. Ramirez-Vivar and other aggrieved employees to utilize their own personal cellular phones to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Ramirez-Vivar and other aggrieved employees were required to use their personal cellular phones to fulfill their work-related responsibilities, such as responding to phone calls from GRIFOLS's management. For example, because Mr. Ramirez-Vivar's work duties would not always allow him to be within radio signal range of his supervisor, Mr. Ramirez-Vivar would spend up to 30 minutes per day responding to phone calls from his supervisor requesting updates regarding shipping orders. Although GRIFOLS required Mr. Ramirez-Vivar and other aggrieved employees to utilize

their personal cellular phones to carry out their work-related responsibilities, GRIFOLS failed to reimburse them for this cost.

GRIFOLS could have provided Mr. Ramirez-Vivar and other aggrieved employees with the actual tools for use on the job, such as company phones, or reimbursed employees for the costs of their cellular phone usage. Instead, GRIFOLS passed these operating costs off onto Mr. Ramirez-Vivar and other aggrieved employees. At all relevant times, Mr. Ramirez-Vivar did not earn at least two (2) times the minimum wage.

Thus, GRIFOLS 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. Ramirez-Vivar 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.” GRIFOLS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Ramirez-Vivar’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Ramirez-Vivar 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. Ramirez-Vivar, 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 GRIFOLS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Ramirez-Vivar 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: GRIFOLS DIAGNOSTIC SOLUTIONS, INC. (via U.S. Certified Mail); GRIFOLS SHARED SERVICES NORTH AMERICA, INC. (via U.S. Certified Mail)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of
4 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000,
Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

5 On **May 21, 2021**, I served the document(s) described as:

6 **FIRST AMENDED COMPLAINT**

7 on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof
8 [] to interested parties as follows [or] [✓] as stated on the attached service list:

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

10 A Limited Liability Partnership

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21 Attorneys for Defendants GRIFOLS DIAGNOSTIC SOLUTIONS INC. AND
22 GRIFOLS SHARED SERVICES NORTH AMERICA, INC.

23 [✓] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the
24 envelope(s) for mailing in the ordinary course of business at Los Angeles, California.
25 I am "readily familiar" with this firm's practice of collection and processing
26 correspondence for mailing. Under that practice, sealed envelopes are deposited with
27 the U.S. Postal Service that same day in the ordinary course of business with postage
28 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.

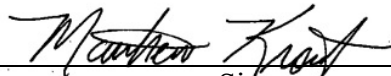
[] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of
collection and processing correspondence for overnight delivery. Under that
practice, overnight packages are enclosed in a sealed envelope with a packing slip
attached thereto fully prepaid. The packages are picked up by the carrier at our
offices or delivered by our office to a designated collection site.

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

Executed this **May 21, 2021**, at Los Angeles, California.

Matthew Krout

Type or Print Name



Signature