

1 **ADVOCATES FOR WORKER RIGHTS LLP**

MARCO A. PALAU (Bar No. 242340)

2 marco@advocatesforworkers.com

JOSEPH D. SUTTON (Bar No. 269951)

3 jds@advocatesforworkers.com

ERIC S. TRABUCCO (Bar No. 295473)

4 est@advocatesforworkers.com

212 9th Street, Suite 314

5 Oakland, California 94607

Telephone: (510) 269-4200

6 Facsimile: (408) 657-4684

7 Attorneys for Plaintiff

8 CALIFORNIA SUPERIOR COURT

9 IN AND FOR THE COUNTY OF KERN—BAKERSFIELD DIVISION

10
11 LUIS ENRIQUE GOMEZ, an individual, on behalf
12 of himself and all other similarly situated
individuals,

13 Plaintiff,

14 vs.

15 CSG PETROLEUM, INC., a California
16 Corporation; BRUNDAGE PETROLEUM, INC., a
California Corporation; PRABHJOT SINGH, an
17 individual, and DOES 1-20, inclusive,

18 Defendants.

Case No.: 37-2019-00052128-CU-OE-NC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Overtime, in Violation of Labor Code § 510 and Wage Orders;
2. Meal Period Violations, Wage Orders and Labor Code §§ 226.7, 512;
3. Rest Period Violations, Wage Orders and Labor Code § 226.7;
4. Wage Statement Violations, Labor Code § 226;
5. Waiting Time Penalties under Labor Code § 203; and
6. Violation of Unfair Competition Law, Business & Professions Code §§ 17200, *et seq.*;
7. Civil Penalties pursuant to Private Attorneys General Act, Labor Code §§ 2699, *et seq.*

DEMAND FOR JURY TRIAL

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

I. INTRODUCTION

1. Luis Enrique Gomez (“Plaintiff” or Plaintiffs”) brings this action for wages, penalties and injunctive relief against CSG Petroleum, Inc., Brundage Petroleum, Inc., Prabhjot Singh, and Does 1 through 20 (collectively “Defendants”). The allegations in this complaint are based on Plaintiff’s personal knowledge and on information and belief. The allegations made on information and belief are supported by evidence or are likely to be supported by evidence obtained through discovery.

2. Plaintiff brings this action on behalf of a class of individuals pursuant to California Code of Civil Procedure section 382.

3. At all times relevant to this action, Defendants have engaged in systematic wage theft, maintaining policies and practices that violate the rights of Plaintiffs and the Class. Defendants have (a) failed to compensate workers for all hours worked at the proper overtime rates; (b) failed to provide timely, complete and off-duty meal periods, or otherwise pay premium wages in lieu thereof; (c) failed to authorize and permit rest periods in compliance with the Wage Orders or otherwise pay premium wages in lieu thereof; (d) failed to pay all wages owed upon termination of the employment relationship; (e) failed to provide itemized statements stating accurately, among other things, total hours worked, gross and net wages earned, all applicable hourly rates and corresponding hours, the street address of the employer, available paid sick leave, and all premium wages earned; and (f) failed to comply with record keeping requirements of California law.

4. Defendants’ acts and omissions, which violate the Labor Code, constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Defendants’ violations of the California Labor Code are unlawful acts which have afforded Defendants an unfair competitive advantage. Plaintiffs and the Class they seek to represent are therefore entitled to all remedies provided under the UCL, including restitution and injunctive, declaratory and/or other equitable relief for a period of four years from the filing of the original complaint through the date of this action’s final disposition.

5. Plaintiff Luis Gomez is an “aggrieved employee” within the meaning of Labor Code section 2699. Plaintiff has complied with the administrative requirements of the Private Attorneys General Act (PAGA) to bring a PAGA claim by giving notice to the employer and the Labor &

1 Workforce Development Agency (LWDA) of the facts and theories supporting the alleged Labor Code
2 and Wage Order violations alleged in this complaint. Having complied with the notice requirements set
3 forth in Labor Code section 2699.3, Plaintiff is authorized to act as a proxy of the state to enforce the
4 Labor Code and Wage Orders and to collect penalties payable to the state and workforce. Plaintiff
5 hereby asserts a claim for civil penalties pursuant to PAGA on behalf of himself, the State of
6 California, and current or former employees (the “PAGA Pool”).

7 6. Plaintiffs also seek reasonable attorneys’ fees and costs pursuant to, *inter alia*, Labor
8 Code sections 2699, 226(e) & (h), 1194(a) and Code of Civil Procedure section 1021.5.

9 7. At all times relevant to this action, Defendants’ conduct has been willful and in
10 reckless disregard of the rights of their workers. Defendants have been on notice of the alleged
11 illegalities but have deliberately continued to exploit workers by enforcing and maintaining the illegal
12 practices described herein. This action is brought not only to recover rightfully earned wages but also
13 to enforce the state’s laws, restore ill-gotten gains and deter Defendants from their illegal conduct.
14 Plaintiffs therefore seek all remedies available to themselves and to the Class.

15 **II. THE PARTIES**

16 8. Luis Gomez is a California resident. At all relevant times, Gomez has been a non-
17 exempt employee of Defendants within the Class period who was paid an hourly wage. Defendants
18 failed to pay Gomez overtime premiums for hours worked in excess of 8 hours in a workday and 40
19 hours in a workweek. Defendants’ failure to pay overtime premiums violates the California Wage
20 Orders and Labor Code. Defendants also violated Luis Gomez’s right to lawful rest breaks and meal
21 periods, denying him premium pay in lieu of rest breaks and meal periods. Defendants failed to
22 provide him with timely, uninterrupted, off-duty meal periods that were free of the employer’s control,
23 and when he was denied lawful meal periods, Plaintiff was denied premium wages. Defendants did
24 not obtain valid and voluntary meal period waivers or on-duty meal period agreements, and instead of
25 providing lawful meal periods. The nature of the work did not prevent Defendants from relieving
26 Gomez of all duty of meal periods. Defendants also failed to authorize and permit Luis Gomez to take
27 off-duty rest periods of at least 10 minutes at the rate of one rest period for shifts greater than 3.5
28 hours, two rest periods for shifts greater than six hours and up to 10 hours, and three shifts for shifts

1 greater than 10 hours and so on. Further, Plaintiff was provided inaccurate itemized wage statements
2 that failed to state accurately the gross and net wages owed, applicable rates of pay and corresponding
3 hours worked, total hours, available sick leave, the employer's address, and other statutory items.
4 When Plaintiff's employment ended, Defendants failed to pay all wages owed timely. Plaintiff at all
5 relevant times was subject to the protections of California's labor laws, including, but not limited to,
6 the terms and conditions of employment prescribed by the Industrial Welfare Commission's Wage
7 Orders. Plaintiff has suffered injury in fact and lost money or property as a result of the conduct
8 described in this complaint. He is an aggrieved employee within the meaning of Labor Code section
9 2699. Pursuant to Labor Code section 2699.3, Gomez has given notice of the alleged violations and
10 the facts and theories supporting them. Upon expiration of 65 days from the date of he gave notice,
11 Plaintiff intends to amend the complaint to add a PAGA cause of action on behalf of the state and
12 current and former employees.

13 9. On information and belief, CSG Petroleum, Inc. is a California corporation that operates
14 one or more gas service stations in California, including stations where Plaintiff and members of the
15 Class worked. The company's principal office is located at 209 Weedpatch Highway in Bakersfield,
16 California, and the agent for service of process is listed as Prabhjot Singh at 209 Weedpatch Highway,
17 Bakersfield, California 93307. Prabhjot Singh has at relevant times been listed as an officer and
18 director of CSG Petroleum. CSG Petroleum is sued as an employer and joint employer of Plaintiff and
19 the Class. On information and belief, CSG Petroleum operated as a single or integrated enterprise
20 under California law.

21 10. On information and belief, Brundage Petroleum, Inc. is a California corporation that
22 operates one or more gas service stations in California, including stations where Plaintiff and members
23 of the Class worked. The company's principal office is located at 209 Weedpatch Highway in
24 Bakersfield, California, and the agent for service of process is listed as Palvinder Singh Gill at 209
25 Weedpatch Highway, Bakersfield, California 93307. Prabhjot Singh has at relevant times been listed
26 as an officer and director of Brundage Petroleum. Brundage Petroleum is sued as an employer and
27 joint employer of Plaintiff and the Class. On information and belief, Brundage Petroleum operated as a
28 single or integrated enterprise under California law.

1 11. On information and belief, Defendant Prabhjot Singh is a resident of Kern County and
2 is officer, director, and managing agent of several gas service stations in California, including CSG
3 Petroleum, Inc. and Brundage Petroleum, Inc. Plaintiff is informed and believes that Praghjot Singh
4 violated or caused violations of the Labor Code and Wage Orders pertaining to minimum wages and
5 hours and days of work, overtime compensation (Labor Code sections 510, 1194, and 1193.6),
6 provision of accurate wage statements (Labor Code section 226), payment of all wages owed timely
7 upon separation from employment (Labor Code section 203), provision of rest and meal periods or
8 additional wages in lieu thereof (Labor Code section 226.7). Plaintiff alleges that Prabhjot Singh is
9 liable to Plaintiff and the Class for violating or causing these violations, pursuant to Labor Code
10 sections 558, 558.1, and 1197.1. These provisions impose liability on an employer or person acting on
11 behalf of the employer who violates or causes violations of the state's labor laws. Plaintiff alleges that
12 Prabhjot Singh is liable for wages, interest, statutory penalties, PAGA penalties, attorney's fees, and
13 costs pursuant to Labor Code sections 558, 558.1, and 1197.1.

14 12. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
15 action, Defendants CSG Petroleum, Inc. and Brundage Petroleum, Inc. have shared common officers,
16 directors, and managing agents, as well as interrelated operations, common management, common
17 control of labor relations, common workforce, and common ownership and financial control. Plaintiffs
18 allege that the entities operate as an integrated enterprise and joint employers.

19 13. At all times relevant to this action, Defendants' offending conduct has been willful and
20 in reckless disregard of the rights of workers. Defendants knew or were on notice of the alleged
21 illegalities but deliberately chose to ignore them.

22 14. The true names and capacities, whether individual, corporate, associates, or otherwise
23 of Defendants sued as Does 1-20, inclusive, are currently unknown to Plaintiff, who therefore sues
24 such Defendants by fictitious names as permitted by Code of Civil Procedure section 474. Plaintiff is
25 informed and believes that each Doe Defendant is legally responsible in some manner for the unlawful
26 acts referred to herein. Plaintiff will seek leave of court to amend this complaint to reflect the true
27 names and capacities of the Defendants designated as Does when such identities become known.

28 15. At all times mentioned herein, the Defendants named as Does 1-20, inclusive, and each

1 of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a
2 significant number of the Plaintiff and the Class in the State of California.

3 16. Plaintiffs are informed and believe and thereon allege that at all relevant times each
4 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other
5 employees described in the class definitions below, and exercised control over their wages, hours, and
6 working conditions. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
7 each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
8 shareholder, subsidiary, affiliate, parent corporation, success or in interest and/or predecessor in
9 interest of some or all of the other Defendants, and was engaged with some or all of the other
10 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other
11 Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiffs are
12 informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of
13 the relationships alleged above, that each Defendant knew or should have known about , and
14 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other
15 Defendants.

16 III. JURISDICTION & VENUE

17 17. This Court has jurisdiction over the claims of Plaintiffs and Class Members under the
18 California Labor Code and the Unfair Competition Law, California Business & Professions Code
19 sections 17200, *et seq.*

20 18. Venue is proper in the Superior Court of the County of Kern, because Plaintiff and
21 other similarly situated individuals have been harmed by Defendants' violations of the Labor Code in
22 Kern County, and because Defendants reside in Kern County.

23 IV. FACTUAL ALLEGATIONS

24 19. At all times relevant to this action, Defendants maintained unlawful employment, labor
25 and compensation policies and practices that affected Plaintiffs and, on information and belief, other
26 workers who are members of the putative Class.

27 20. Defendants failed to pay Plaintiffs and, on information and belief, the Class for all hours
28 worked in violation of the state's overtime provisions.

1 21. Defendants required and suffered and permitted Plaintiffs and, on information and
2 belief, members of the Class to work in excess of eight (8) hours in a workday and 40 hours in a
3 workweek without proper overtime compensation under California law.

4 22. Defendants failed to relieve employees of all duty for timely and complete meal
5 periods. Despite failure to provide off-duty and timely meal periods, and failure to provide a second
6 meal period for shifts greater than 10 hours, Defendants denied class members meal period premiums.
7 Plaintiff did not voluntarily waive meal periods, nor did he voluntarily agree to a valid on-duty meal
8 period policy. Plaintiff is informed and believes that Defendants did not obtain valid and voluntary
9 meal periods waivers or on duty meal period agreements from class members. Any on-duty meal
10 period agreement is invalid because the nature of the work does not prevent Defendants from
11 providing class members with off-duty meal periods. Plaintiffs and, on information and belief, class
12 members were denied meal premiums for meal periods that were denied, were not off-duty, were less
13 than 30 minutes, or that were untimely (provided after the fifth hour of work).

14 23. Plaintiffs and, on information and belief, class members were denied off duty rest
15 breaks of at least net 10 minutes of rest time at the required rate of one break for shifts greater than 2.5
16 hours up to 6 hours; two breaks for shifts greater than 6 hours and up to 10 hours; three breaks for
17 shifts greater than 10 hours and up to 14 hours; and so on. Plaintiffs and, on information and belief,
18 class members were denied rest premiums for denied, short or untimely rest breaks.

19 24. Defendants failed to maintain accurate payroll records required by Labor Code section
20 1174.

21 25. Plaintiffs and, on information and belief, class members were not provided accurate,
22 itemized wage statements within the meaning of the Wage Orders and Labor Code section 226 that
23 contain accurate information required by those provisions.

24 26. Plaintiffs and, on information and belief, the Class were entitled to receive all wages
25 owed to them weekly, semi-monthly, or bi-weekly during their employment. Nevertheless, Plaintiffs
26 and, on information and belief, class members did not receive payment of all wages, including
27 overtime wages and meal period and rest break premiums periodically as required under Labor Code
28 section 204.

27. Plaintiff and, on information and belief, members of the Class were entitled to receive all wages owed to them timely upon separation of employment pursuant to Labor Code sections 201 and 202. Defendants failed to pay all wages owed, including overtime, minimum and rest and meal premium wages timely upon separation of employment, entitling them to penalties under Labor Code section 203.

V. CLASS ALLEGATIONS

28. Plaintiffs bring this action as a class action under Code of Civil Procedure section 382 on behalf of the following class:

All non-exempt employees who work or have worked for Defendants in California within four (4) years prior to the filing of the initial complaint in this action through the date of this action's final disposition, plus any tolling for other class and representative actions.

29. **Reservations of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or by limitation to particular issues.

30. **Numerosity**: The Proposed Class is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that during the relevant time period, Defendants employed dozens if not hundreds of individuals in California. The Class Members are so numerous that joinder of all Class Members is impracticable. The individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

31. **Typicality:** Plaintiffs' claims are typical of the claims of Class Members.

32. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no interest that is antagonistic to the other Class Members. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member. Plaintiffs have retained competent counsel experienced in wage and hour class action litigation.

1 33. **Predominant Common Questions:** Common questions of law and fact exist to all
2 members of the Proposed Class and predominate over any questions solely affecting individual
3 members of the Proposed Class.

4 34. Common questions of fact and law include the following:

- 5 • Whether Defendants suffered, permitted, and/or required Plaintiffs and the Class
6 to work in excess of 8 hours per day, 40 hours per week, and/or on the 7th
7 workday in a workweek without paying overtime premiums of one and one-half
8 times the regular rate of pay, in violation of the Labor Code and the Wage
9 Orders;
- 10 • Whether Defendants suffered, permitted, and/or required Plaintiffs and the Class
11 to work in excess of 12 hours per day and/or in excess of 8 hours on the 7th
12 workday in a workweek without paying overtime premiums of twice the regular
13 rate of pay (“doubletime” compensation), in violation of the Labor Code and the
14 Wage Orders;
- 15 • Whether Defendants, as a matter of policy or practice, failed to relieve Plaintiffs
16 and the Class of all duty for a first 30-minute meal period before the end of the
17 5th hour of work in a workday, in violation of the Labor Code, the Wage Orders,
18 and California law;
- 19 • Whether Defendants, as a matter of policy or practice, failed to relieve Plaintiffs
20 and the Class of all duty for a second 30-minute meal period for shifts greater
21 than 10 hours in a workday, in violation of the Labor Code, the Wage Orders,
22 and California law;
- 23 • Whether Defendants maintained an unlawful on-duty meal period policy, in
24 violation of the Labor Code and Wage Orders, because the nature of the work
25 does not prevent Defendants from providing off-duty meal periods;
- 26 • Whether Defendants, as a matter of policy or practice, failed to permit Plaintiffs
27 and the Class to take net 10 minute rest breaks for each 4 hour work period, or
28

major portion thereof, in violation of the Labor Code, the Wage Orders, and California law;

- Whether Defendants, as a matter of policy or practice, failed to pay premium rest period and meal period wages for non-compliance of the rest and meal period requirements, in violation of the Wage Orders and Labor Code sections 226.7 and 512;
- Whether Defendants knowingly and intentionally failed to provide Plaintiffs and the Class written wage statements that accurately reflect all gross and net wages earned, total hours worked, applicable hourly rates and corresponding hours, the employer's address, and available sick pay, in violation of the Labor Code, the Wage Orders, and California law;
- Whether Plaintiffs and the Class are deemed to have suffered injury within the meaning of Labor Code section 226 for the wage statement violations described herein;
- Whether Plaintiffs and the Class are entitled to penalties, damages, and an injunction ensuring compliance with Labor Code section 226;
- Whether Plaintiffs and members of the class whose employment terminated are entitled to waiting time penalties under Labor Code section 203 for Defendants' failure to pay all wages owed timely upon the separation from employment;
- Whether Defendants engaged in unlawful and/or unfair business practices in violation of Business & Professions Code sections 17200 *et seq.* ("UCL");
- Whether Defendants are liable to Plaintiffs and the Class pursuant to the UCL for restitution of unpaid overtime wages and rest and meal period premiums; and
- Whether Plaintiffs and the Class are entitled to injunctive, declaratory, and other equitable relief pursuant to the UCL.

35. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits against

1 corporate defendants. A class action is superior to other available means for fair and efficient
2 adjudication of class members' claims and offers significant benefits to the parties and the court. A
3 class action will allow a number of similarly situated persons to simultaneously and efficiently
4 prosecute their common claims in a single forum without the unnecessary duplication of effort and
5 expense that numerous individual actions would entail. The individual monetary amounts due to many
6 class members may not be large enough on their own for individual class members to obtain legal
7 representation and relief. Moreover, a class action will serve important public interests by enabling the
8 non-waivable statutory rights of class members to be effectively asserted, and fundamental public
9 policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating
10 the rights of workers who currently provide courier services to Defendants and are less likely to come
11 forward to assert their rights based on fears of reprisal. Finally, a class action will prevent the potential
12 for inconsistent or contradictory judgments inherent in individual litigation and address the problems
13 inherent in random and fragmentary enforcement.

14 36. Plaintiffs intend to send notice to all members of the Class to the extent required by
15 Labor Code section 382. The names and addresses of the Class are ascertainable through review of
16 time and payroll records of Defendants.

17 **VI. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 Failure to Pay Overtime Wages

20 (Violation of Wage Orders and Labor Code sections 204, 223, 510, 1194, 1198)

21 Plaintiffs on Behalf of the Class Against all Defendants

22 37. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

23 38. At all relevant times, Defendants have been subject to Labor Code and Wage Order
24 provisions requiring overtime compensation, including the applicable Wage Orders and Labor Code
25 sections 510, 1194, 1198. California law requires overtime compensation at the rate of one and one-
26 half (1.5) times the regular rate of pay for hours in excess of eight (8) in a workday and 40 in a
27 workweek. Similarly, these overtime provisions require overtime pay at the rate of twice the regular
28 rate of pay for hours in excess of 12 in a workday and eight (8) on any seventh day of a workweek
(i.e., doubletime pay).

39. At all times relevant to this action, Plaintiffs and, on information and belief, the Class have worked in excess of 8 hours in a workday and 40 hours in a workweek without payment of premium wages at time and one-half the regular rate of pay.

40. At all times relevant to this action, Plaintiffs and, on information and belief, class members have worked in excess of 12 hours in a workday and 8 hours on the seventh day of the workweek without payment of premium wages at double the regular rate of pay.

41. Defendants violated section 204 of the Labor Code by failing to pay all wages owed in the pay period, and violated section 223 of the Labor Code by secretly paying less than the statutory wage while purporting to comply with the statute.

42. The violations described herein serve as predicate violations under PAGA.

43. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys' fees in amounts to be proven at trial on behalf of themselves and the Class.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods or Premium Wages in Lieu Thereof
(Violation of Wage Orders and Labor Code sections 226.7 and 512)
Plaintiffs on Behalf of the Class Against all Defendants

44. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

45. California Labor Code section 512 and the Wage Orders prohibit employers from employing workers for a work period of more than five hours per day without providing the employee with a meal period of at least 30 minutes, or for a work period of more than 10 hours without a second meal period of at least 30 minutes. California law requires the meal periods to be off duty, without interruption, and the first meal period of the day must occur within five hours from the start of the shift.

46. California Labor Code section 226.7 prohibits any employer from requiring any employee to work during any meal period mandated by the applicable Wage Orders, and states that an employer that fails to provide an employee with a required meal period in compliance with Section 512 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular rate of compensation (i.e., a meal period premium) for each work day that the employer does not provide a compliant meal period.

1 47. The applicable Wage Orders echo the provisions of Sections 226.7 and 512 of the Labor
2 Code governing meal periods. For example, Wage Order 5(11), provides as follows:

3 (A) No employer shall employ any person for a work period of more than five
4 (5) hours without a meal period of not less than 30 minutes, except that when a
5 work period of not more than six (6) hours will complete the day's work the
6 meal period may be waived by mutual consent of the employer and employee.
7 In the case of employees covered by a valid collective bargaining agreement,
8 the parties to the collective bargaining agreement may agree to a meal period
9 that commences after no more than six (6) hours of work. (B) An employer may
10 not employ an employee for a work period of more than ten (10) hours per day
11 without providing the employee with a second meal period of not less than 30
12 minutes, except that if the total hours worked is no more than 12 hours, the
13 second meal period may be waived by mutual consent of the employer and the
14 employee only if the first meal period was not waived.

15 (B) An employer may not employ an employee for a work period of more than
16 ten (10) hours per day without providing the employee with a second meal
17 period of not less than 30 minutes, except that if the total hours worked is no
18 more than 12 hours, the second meal period may be waived by mutual consent
19 of the employer and the employee only if the first meal period was not waived.

20 (C) Unless the employee is relieved of all duty during a 30 minute meal period,
21 the meal period shall be considered an "on duty" meal period and counted as
22 time worked. An "on duty" meal period shall be permitted only when the nature
23 of the work prevents an employee from being relieved of all duty and when by
24 written agreement between the parties an on-the-job paid meal period is agreed
25 to. The written agreement shall state that the employee may, in writing, revoke
26 the agreement at any time.

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

 (E) In all places of employment where employees are required to eat on the
premises, a suitable place for that purpose shall be designated.

29 48. At all times relevant to this action, Defendants violated the provisions of the Labor
30 Code and Wage Orders regulating meal periods by failing to comply with the requirement of providing
31 to Plaintiffs and, on information and belief, the Class with a timely meal period within the first five
32 hours of work that was completely off duty, or a second meal period when workers worked more than
33 10 hours per day. Plaintiffs and, on information and belief, the Class did not waive meal periods, and

1 Plaintiffs are informed and believe and thereon allege that valid meal period waivers were not in place
2 or were not voluntarily consented to.

3 49. Plaintiff is informed and believes and thereon alleges that Defendants did not obtain
4 valid on-duty meal period agreements. The nature of the work did not prevent employees from being
5 relieved of all duty.

6 50. Defendants are liable for meal period premiums pursuant to Labor Code section 226.7.

7 51. Defendants' violation of the meal and rest period provisions of the Labor Code and
8 Wage Orders serve predicates for PAGA liability.

9 52. Wherefore, Plaintiffs seek unpaid wages and interest in amounts to be proven at trial on
10 behalf of themselves and the Class.

11
12 **THIRD CAUSE OF ACTION**

13 Failure to Provide Rest Periods or Premium Wages in Lieu Thereof

14 (Violation of Wage Orders and Labor Code section 226.7)

15 Plaintiffs on Behalf of the Class Against all Defendants

16 53. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

17 54. In addition, California Labor Code section 226.7 prohibits any employer from requiring
18 an employee to work during any rest period mandated by the applicable Wage Orders. For example,
19 Wage Order 5(12) provides as follows:

20 (A) Every employer shall authorize and permit all employees to take rest
21 periods, which insofar as practicable shall be in the middle of each work period.
22 The authorized rest period time shall be based on the total hours worked daily
23 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
24 thereof. However, a rest period need not be authorized for employees whose
25 total daily work time is less than three and one-half (3 1/2) hours. Authorized
26 rest period time shall be counted as hours worked for which there shall be no
27 deduction from wages.

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

55. At all times relevant to this action, Defendants failed to authorize and permit rest
periods to Plaintiffs and, on information and belief, the Class with of at least 10 minutes of time

1 completely off duty at a rate of one rest period for shifts greater than 2.5 hours up to six hours, two rest
2 breaks for shifts greater than six hours up to 10 hours, and three rest breaks for shifts greater than 10
3 hours up to 14 hours, and so on.

4 56. Defendants are liable for rest period premiums pursuant to Labor Code section 226.7.

5 57. Defendants' violation of the meal and rest period provisions of the Labor Code and
6 Wage Orders serve predicates for PAGA liability.

7 58. Wherefore, Plaintiffs seek unpaid wages and interest in amounts to be proven at trial on
8 behalf of themselves and the Class.

9
10 **FOURTH CAUSE OF ACTION**

11 Failure to Provide Accurate Itemized Wage Statements
(Violation of Labor Code sections 226 and the Wage Orders)
12 Plaintiffs on Behalf of the Class Against all Defendants

13 59. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

14 60. California Labor Code section 226(a) provides, in relevant part, that every employer
15 must furnish each employee with an itemized wage statement that accurately shows the following:

16 (1) gross wages earned, (2) total hours worked by the employee, except as
17 provided in subdivision (j), (3) the number of piece-rate units earned and any
18 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
19 deductions, provided that all deductions made on written orders of the employee
20 may be aggregated and shown as one item, (5) net wages earned, (6) the
21 inclusive dates of the period for which the employee is paid, (7) the name of the
22 employee and only the last four digits of his or her social security number or an
23 employee identification number other than a social security number, (8) the
24 name and address of the legal entity that is the employer and, if the employer is
25 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
26 and address of the legal entity that secured the services of the employer, and (9)
27 all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee....

61. At all times relevant to this action, Defendants have failed to provide accurate itemized
wage statements, in violation of Labor Code section 226. Plaintiffs and, on information and belief,
other members of the class were given wage statements that failed to list the gross and net wages
earned, total hours worked, all applicable rates of pay and corresponding number of hours at each rate
of pay, the employer's physical address, and available sick leave.

62. Defendants' failure to comply with the requirements of Labor Code section 226 and provide accurate wage statements was knowing and intentional within the meaning of that provision. Plaintiffs and members of the putative Class are deemed to have suffered injury pursuant to Labor Code section 226(e).

63. Pursuant to Labor Code section 226(e), Plaintiffs and class members are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

64. Plaintiffs and the class are also entitled to injunctive relief.

65. Defendants' violation of Labor Code section 226 serves as a predicate violation for PAGA.

66. Wherefore, Plaintiffs seek damages, penalties, injunctive relief, attorney's fees and cost of suit in amounts to be proven at trial on behalf of themselves and the Class.

FIFTH CUASE OF ACTION

**Willful Failure to Pay All Wages Owed Timely Upon Discharge or Resignation
(Violation of Labor Code sections 201 and 202)**

Plaintiff on Behalf of the Class Against all Defendants

67. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

68. California Labor Code sections 201 and 202 require immediate payment of all unpaid wages at the time an employee is discharged or resigns from employment.

69. Defendants have willfully failed to pay all wages owed to Plaintiffs and, on information and belief, members of the Class timely upon the termination of their employment relationship with Defendants, including wages for all hours worked, overtime wages, meal and rest period premium wages. For Defendants' willful failure to pay all wages timely, Plaintiffs' and the Class' wages continue from the due date for up to 30 days at this daily rate, pursuant to Labor Code section 203.

70. This violation serves as a predicate for PAGA penalties payable to the state and workforce.

71. Wherefore, Plaintiffs seek waiting time penalties and costs in amounts to be proven at trial on behalf of themselves and the Class.

1 **SIXTH CAUSE OF ACTION**

2 California Unfair Competition Law

3 (Violation of Business & Professions Code sections 17200, *et seq.*)

4 Plaintiff on Behalf of the Class Against all Defendants

5 72. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

6 73. Business and Professions Code section 17200 defines “unfair competition” to include
any unlawful business practice.

7 74. California Business and Professions Code § 17203 allows a person who has lost money
8 or property as a result of unfair competition to bring an action to recover money or property that may
9 have been acquired from similarly situated persons by means of unfair competition.

10 75. Defendants unlawful and unfair business practices resulted in the following violations
11 of California Labor Code and Wage Order provisions:

- 12 • Failure to pay overtime wages for work exceeding 8 hours in a workday and 40
13 hours in a workweek;
- 14 • Failure to pay doubletime wages for work exceeding 12 hours in a workday and
15 exceeding 8 hours on the seventh day of the workweek;
- 16 • Failure to pay rest period premiums for non-compliance with the rest period
17 requirements of the Labor Code and Wage Orders;
- 18 • Failure to pay meal period premiums for non-compliance with the meal period
19 provisions of the Labor Code and Wage Orders;
- 20 • Failure to pay all wages owed timely upon termination of the employment
relationship, as required by Labor Code section 201 and 202;

21 76. On information and belief, at all times relevant to this action, Plaintiffs and the Class
22 have lost, and Defendants have either acquired, or may have acquired, money or property in the form
23 of earned unpaid wages for all hours worked, unpaid overtime and doubletime wages, unpaid meal
24 period and rest break premium wages, and reimbursement of expenses from Plaintiffs and the Class by
25 means of unfair, unlawful competition.

26 77. Pursuant to Business and Professions Code section 17203, Plaintiff seeks restitution of
27 all these moneys and property, that Defendants either acquired, and/or may have acquired, from
28 Plaintiffs and the Class by means of unfair competition in amounts subject to proof at trial. Plaintiffs

1 also seek to prevent Defendants from continuing to engage in the unlawful and/or unfair business
2 practices alleged herein.

3 78. Defendants, by the acts or omissions alleged of herein, have injured and are injuring the
4 interests of the general public in that other employers who exercise honest compliance with applicable
5 wage and hour laws, including the laws violated by Defendants, are at an unfair competitive
6 disadvantage as a result of Defendants' conduct.

7 79. Wherefore, Plaintiffs seek restitution of wages and the economic value of benefits
8 unlawfully denied to Plaintiffs and the Class by Defendants in amounts subject to proof.

9
10 **SEVENTH CAUSE OF ACTION**

11 California Private Attorneys General Act

12 (Civil Penalties Pursuant to Labor Code section 2699, *et seq.*)

13 Plaintiff for Himself, the PAGA Pool, and the State Against Defendants

14 80. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

15 81. Plaintiffs are aggrieved employees as defined in California Labor Code section 2699(a).
16 They bring this cause of action on behalf the State of California with respect to the labor law violations
17 they and other current or former non-exempt employees experienced during the relevant time-period,
18 as alleged in this complaint.

19 82. As described in this complaint, Defendants violated the California Labor Code by
20 failing to compensate workers for all hours worked, failing to pay overtime premiums, failing to
21 provide meal periods or pay premium wages in lieu thereof, failing to provide rest breaks or pay
22 premium wages in lieu thereof, failing to provide accurate itemized wage statements, failing to timely
23 pay final wages at resignation or termination, and failing to maintain accurate payroll record. As a
24 consequence, Defendants have violated the rights of Plaintiffs and, on information and belief, the
25 rights of other current or former employees who worked for Defendants as non-exempt employees.

26 83. PAGA permits an individual to recover civil penalties on behalf of herself and other
27 current or former employees for violations of the Labor Code. Cal. Labor Code section 2699(a).

28 84. Plaintiff Luis Enrique Gomez has complied with the administrative requirements of
PAGA set forth in Labor Code section 2699.3. Plaintiff gave written notice to the employer and the

1 LWDA of the facts and theories supporting the alleged violations of the Labor Code and Wage Orders.
2 This notice was mailed by certified mail with return receipt requested. More than 65 days have passed
3 since notice was sent and Plaintiff is now entitled to bring this claim as a matter of right.

4 85. Defendants are liable for PAGA penalties for the Wage Order and Labor Code
5 violations described in this complaint. Plaintiffs alleges that Defendants violated: sections 201-202,
6 256 and 1197.1 subjecting Defendants to liability for waiting time penalties based on willful (section
7 203) failure to pay all wages owed timely upon separation from employment; sections 200, 204, 204b,
8 and 210 by failing to pay all wages owed weekly, semi-monthly or when due; sections 221, 223, 225.5
9 for secretly paying less than the statutory or agreed upon rates; sections 226 and 226.3 for providing
10 inaccurate wage statements; sections 510, 511, 558 and 1198 for failing to pay overtime premiums;
11 sections 226.7, 512 and the Wage Orders for failing to comply with the rest and meal period provisions
12 of California law or pay additional wages in lieu thereof; sections 1194, 1194.2 and 1197.1 for failing
13 to pay for all hours worked in violation of the minimum wage; sections 1174 and 1174.5 for failing to
14 maintain required payroll records. In addition, Defendants violated provisions of the California
15 Industrial Welfare Commission Wage Orders, including provisions governing payment for all hours
16 worked, payment of overtime premiums for work in excess of 8 hours in a workday and 12 hours in a
17 workweek, provision of rest and meal breaks or additional wages in lieu thereof, and accurate record-
18 keeping.

19 86. With respect to record-keeping, California Labor Code section 1174(d) requires
20 employers to keep “payroll records showing the hours worked daily by and the wages paid to” all
21 employees. Section 1174 requires employers to keep such records for at least three years. Labor Code
22 section 1776 similarly requires employers that are contractors or subcontractors to maintain payroll
23 records.

24 87. In addition, the applicable Wage Order(s) require employers to keep accurate time
25 records showing when each employee begins and ends each work period and meal period, as well as
26 total hours worked in the payroll period and applicable rates of pay.

88. Defendants have failed to maintain accurate records required by the Wage Order(s) and Labor Code, subjecting it to civil penalties under PAGA, including pursuant to Labor Code sections 1174.5.

89. Defendants are liable for civil penalties for their failure to compensate for all hours worked, pursuant to Labor Code sections 200, 204, 204b, 210, 223, 510, 511, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 2698 *et seq.*

90. Defendants are liable for civil penalties for failing to pay overtime pursuant to Labor Code sections 510, 558, and 2698 *et seq.*

91. Defendants are liable for failing to provide accurate wage statements, giving rise to liability for Civil Penalties pursuant to Labor Code sections 226, 226.3, and 2698 *et seq.*

92. Defendants are liable for civil penalties pursuant to California Labor Code sections 203, 256, 1197.1 and 2698 *et seq.* for failing to pay all wages owed timely upon separation from employment, in violation of Labor Code sections 201 and 202.

93. PAGA permits an individual to recover civil penalties on behalf of herself, the state and other current or former employees for violations of the Labor Code. Cal. Labor Code section 2699(a).

94. Pursuant to Labor Code sections 558 and 1197.1, Defendant Prabhjot Singh is liable for Civil Penalties because he violated or caused violations of the overtime laws (Labor Code section 510 and Wage Orders), the minimum wage laws (Labor Code section 1194 and Wage Orders), rest and meal period laws (Labor Code sections 226.7, 512, and Wage Orders), and the requirement to pay all wages owed timely upon separation of employment (Labor Code sections 201-203).

95. Wherefore, Plaintiffs seek PAGA penalties for themselves, the workforce and the state, plus attorney's fees, costs and interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For an order awarding compensatory damages for all wages earned but not paid, and all overtime wages earned and not paid, in the amount to be proven at trial, pursuant to Labor Code sections 200, *et seq.*, 510, 511, 1194, 1197, 1198;

2. For pre-judgment interest of 10 percent on the unpaid wages and overtime compensation owed to Plaintiffs under Labor Code section 218.6;
3. For unpaid overtime under Labor Code section 1194;
4. For an award of attorney's fees pursuant to Labor Code section 1194;
5. For rest and meal period premiums pursuant to Labor Code section 226.7;
6. For "waiting time" penalties to Plaintiffs under California Labor Code section 203;
7. For damages or penalties, injunctive relief, attorneys' fees and costs for violation of Labor Code section 226 for failing to provide accurate itemized wage statements;
8. For earned but unpaid wages as equitable relief to Plaintiffs and the Class under the UCL for a period that extends the statute of limitations or recovery period for wages to four years;
9. For declaratory judgment that the actions, conduct, and practices of Defendants complained of herein constitute unfair business practices under the UCL;
10. For an injunction and order permanently restraining and enjoining Defendants from engaging in and continuing the unlawful policies and practices complained of herein;
11. For an order certifying a class pursuant to CCP section 382;
12. For an order appointing Plaintiffs as class representatives;
13. For an order that counsel for Plaintiffs be appointed class counsel;
14. For reasonable attorney's fees and costs, including expert witness fees, pursuant to Code of Civil Procedure section 1021.5 and other provisions of the California Labor Code;
15. For interest to the extent permitted by law;
16. For costs and expenses of this action;
17. For an award of civil penalties payable to Plaintiff and other current or former employees (PAGA Pool) under PAGA for each violation of the Labor Code and Wage Order described in this complaint, including but not limited to penalties under Labor Code sections 210, 226.3, 225.5, 256, 558, 1174.5, 1197.1, 2699(a), 2699(f), and other provisions described in this complaint; and
18. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on claims so triable.

Dated: July 7, 2021

ADVOCATES FOR WORKER RIGHTS LLP



Marco A. Palau
Attorneys for Plaintiff