

1 GRAHAMHOLLIS APC
2 Graham S.P. Hollis (SBN 120577)
3 ghollis@grahamhollis.com
4 Vilmarie Cordero (SBN 268860)
5 vcordero@grahamhollis.com
6 Hali M. Anderson (SBN 261816)
7 handerson@grahamhollis.com
8 Nathan J. Reese (SBN 283150)
nreese@grahamhollis.com
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Telephone: 619.692.0800
Facsimile: 619.692.0822

9 Attorneys for Plaintiff PEPE MALVEDA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN DIEGO

12 PEPE MALVEDA, individually and on behalf
13 of all similarly situated employees of
14 Defendants in the State of California,

15 Plaintiff,

16 v.

17 PROVIDIEN, LLC, a limited liability
18 company; PROVIDIEN THERMOFORMING
19 INC., a corporation; and DOES 1 THROUGH
50, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/21/2021 at 02:24:54 PM

Clerk of the Superior Court
By Candace Schaeffer, Deputy Clerk

Case No.: 37-2021-00017707-CU-OE-CTL

Unlimited Civil
Amount Demanded exceeds \$25,000.00

INDIVIDUAL AND CLASS ACTION
COMPLAINT

[Cal. Code Civ. Proc. § 382]

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Pay Minimum and Regular Wages;
4. Failure to Pay All Overtime Wages;
5. Failure to Indemnify Necessary Business Expenses;
6. Failure to Maintain Accurate Records
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Timely Pay All Wages Due Upon Separation of Employment; and
9. Violation of Business & Professions Code §17200, *et seq.*

– **JURY TRIAL DEMANDED** –

PEPE MALVEDA, individually and on behalf of all other similarly situated employees of PROVIDIEN, LLC, PROVIDIEN THERMOFORMING INC, and DOES 1 through 50, inclusive, alleges as follows:

I.

INTRODUCTION

1. Plaintiff PEPE MALVEDA (“Plaintiff”) brings this individual and putative class action against Defendants PROVIDIEN, LLC, PROVIDIEN THERMOFORMING INC (collectively referred to as “PROVIDIEN”), and DOES 1 through 50 (hereinafter collectively with PROVIDIEN referred to as “Defendants”), inclusive, for engaging in a pattern of wage and hour violations under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders; and IWC Wage Order No. 1.

2. Plaintiff brings this action on behalf of all current and former employees who were employed by Defendants in the State of California as non-exempt employees during the applicable relevant time periods (hereinafter “similarly situated employees”).

3. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

4. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiff and other similarly situated employees in California include, but are not limited to:

- a. Failure to provide off-duty meal periods;
- b. Failure to authorize and permit off-duty paid rest periods;
- c. Failure to pay all minimum and regular wages for all hours worked;
- d. Failure to pay all overtime wages;
- e. Failure to indemnify employees for necessary business expenses;
- f. Failure to maintain accurate records;
- g. Failure to provide accurate itemized wage statements; and
- h. Failure to timely pay all wages due upon separation of employment.

5. Plaintiff brings this lawsuit against Defendants seeking restitution, declaratory judgment, injunctive relief, and monetary relief on behalf of himself and all other similarly situated employees of

Defendants in California. Plaintiff seeks to recover, *inter alia*, unpaid wages, unreimbursed expenses, interest, attorney's fees, damages, liquidated damages, penalties, and costs pursuant to Labor Code §§ 201, 202, 203, 218.5, 218.6, 226, 226.7, 246, 510, 512, 1194, 1194.2, 1197, 1198, 2802, California Business and Professions Code § 17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

6. Plaintiff reserves the right to name additional representatives.

II.

PARTIES

A. Plaintiff

7. Plaintiff is a former employee of Defendants, who worked as a non-exempt employee for Defendants in State of California, County of San Diego.

8. Plaintiff is a resident of the State of California and currently resides in the County of San Diego.

9. At all relevant times, other similarly situated non-exempt employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

B. Defendants

10. Defendant PROVIDIEN THERMOFORMING, INC. is a California corporation with its principal place of business being in Scottsdale, Arizona.

11. Defendant PROVIDIEN LLC is a Delaware limited liability company with its principal place of business being in Scottsdale, Arizona.

12. Defendants operate a business in the field of medical manufacturing solutions, including new product development, supply chain management, product lifecycle management, thermoforming, medical device contract manufacturing and assembly, machining and metals, and medical injection molding to the medical device industry.

13. Defendants' wrongful conduct, as alleged herein, occurred in the County of San Diego and in various counties throughout the State of California.

14. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether named or fictitious, is and, at all relevant times, was authorized to do business and did business in the State of

1 California and was Plaintiff's and other similarly situated employees' "employer" as defined in and
2 subject to the California Labor Code and the applicable IWC Wage Order.

3 15. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint.
4 The true names and capacities of the defendants named as DOES 1 through 50, inclusive, are presently
5 unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of
6 the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiff is informed
7 and believes, and on that basis alleges, that each of the fictitious defendants participated in the acts alleged
8 in this Complaint.

9 16. Plaintiff and all other similarly situated employees are, and at all relevant times were,
10 employees of each Defendant, including DOES 1 through 50, within the meanings set forth in the
11 California Labor Code and applicable IWC Wage Order.

12 17. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
13 or fictitious, was the agent, employee or other person acting on behalf of every other defendant, and, in
14 participating in the acts alleged in this Complaint, acted within the scope of such agency or employment
15 and ratified the acts of each other defendant.

16 18. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
17 or fictitious, exercised control over Plaintiff's and other similarly situated employees' wages, hours and/or
18 working conditions.

19 19. Plaintiff is further informed and believes that at all relevant times, each Defendant, whether
20 named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan
21 or policy, and the acts of each Defendant are legally attributable to the other defendants.

22 20. Each Defendant, whether named or fictitious, was the alter ego of each of the other
23 Defendants at all relevant times herein.

24 21. A unity of interest and ownership between each Defendant, whether named or fictitious,
25 exists such that all Defendants acted as a single employer of Plaintiff and all other similarly situated
26 employees.

27 ///

28 ///

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

III.

JURISDICTION AND VENUE

22. This Court has subject-matter jurisdiction to hear this case because Plaintiff is informed and believes that the monetary damages and restitution sought herein for Defendants' conduct exceeds the minimum jurisdictional limits of the Superior Court.

23. Venue is proper in the County of San Diego pursuant to Code of Civil Procedure §§ 395(a) and 395.5 because Defendants maintain a manufacturing plant and transact substantial business in the County of San Diego, Defendants employed Plaintiff and other similarly situated employees in the County of San Diego, and the unlawful acts alleged herein that arose in the County of San Diego have a direct effect on Plaintiff and other similarly situated employees within the County of San Diego.

IV.

GENERAL ALLEGATIONS

24. Plaintiff PEPE MALVEDA is a former employee of Defendants who worked as a non-exempt material handler at Defendants' manufacturing plant in San Diego, California from approximately January of 2020 to March of 2021.

25. As a material handler, Plaintiff handled the movement of materials within Defendants' warehouse, prepared and delivered raw materials to and from the production area of the facility, and performed other functions. He was paid between \$16.50 and \$19.50 per hour during the course of his employment. Further, his shift often exceeded eight (8) hours in a workday or forty (40) hours in a workweek.

26. At no time during Plaintiff's employment was he primarily engaged in administrative duties, and the majority of the work he performed was non-managerial in nature. Furthermore, Plaintiff was not primarily engaged in work directly related to management policies or general business operations of Defendants. Plaintiff was not permitted to exercise discretion or independent judgment and could not hire or fire employees. At all times, Plaintiff was a non-exempt employee and should have received the protections afforded by the California Labor Code and the applicable IWC Wage Order.

27. Defendants denied Plaintiff and other similarly situated employees certain rights afforded to them under the California Labor Code and the IWC Wage Order. Specifically, Defendants did not

1 properly compensate Plaintiff and other similarly situated employees for all hours worked, failed to
2 provide compliant meal periods and authorize and permit compliant rest periods, failed to maintain
3 accurate records, failed to provide accurate itemized wage statements, failed to reimburse for all necessary
4 expenses, and failed to pay all wages due and owing by the times set forth by law.

5 28. Prior to March 23, 2020, Defendants maintained a timekeeping system whereby the time
6 punches of Plaintiff and other similarly situated employees were rounded to the nearest fifteen (15) minute
7 increments. During this period, Defendants also maintained a written policy and/or directive stating that
8 employees were not permitted to clock-in for work more than seven (7) minutes prior to the scheduled
9 start time of their shift. In addition, throughout the relevant period, Defendants maintained a strict
10 attendance policy applicable to Plaintiff and other similarly situated employees, which prohibited
11 employees from being even a minute late for a work. Otherwise, they would be subject to discipline for
12 tardiness. Thus, Defendants' system of rounding employee time punches did not operate in a neutral
13 fashion and instead systematically favored Defendants by allowing employees to work off the clock at the
14 beginning of their shifts yet denied them any of the benefits of rounding.

15 29. Defendants also scheduled Plaintiff and other similarly situated employees to begin their
16 work shift at the same time. Each of the three (3) daily shifts had an estimate of a one hundred (100)
17 employees who were scheduled to start work at the same time. As a result, during the period prior to the
18 onset of the Covid-19 Pandemic, a long line that would form at the time clock where Plaintiff and other
19 similarly situated employees would clock in for work. Plaintiff and other similarly situated employees
20 were forced to wait in this line for several minutes without compensation.

21 30. The combination of Defendants' rounding policy, its strict prohibition clocking in more
22 than seven (7) minutes early, its strict prohibition against clocking in late, and the fact that Plaintiff and
23 other similarly situated employees were required to wait several minutes in line in order to clock in for
24 work, resulted in employees being systematically deprived of compensation for all time they were suffered
25 or permitted to work. As such, they were not compensated for all minimum and regular wages owed.
26 Further, because Plaintiff and other similarly situated employees often worked over eight (8) hours in a
27 workday or over forty (40) hours in a workweek, the time spent off-the-clock resulted in Plaintiff and
28 other similarly situated employees being deprived of all overtime compensation owed.

1 31. Plaintiff and other similarly situated employees of Defendants did not sign a valid on-duty
2 meal period agreements at any point during their employment with Defendants, nor did they properly
3 waive any of their meal periods.

4 32. Defendants had a pattern and practice of not providing Plaintiff and other similarly situated
5 employees with legally compliant meal periods, even though Plaintiff and other similarly situated
6 employees worked more than six (6) hours during their workday.

7 33. As previously discussed, prior to March 23, 2020, Defendants maintained a timekeeping
8 system whereby the time punches of Plaintiff and other similarly situated employees were rounded to the
9 nearest fifteen (15) minute increment. On information and belief, Defendants' system also applied to
10 employees' time punches for meal periods. As such, the timekeeping for meal periods failed to precisely
11 measure actual length of the meal period in violation of *Donohue v. AMN Services, LLC* (2021).

12 34. As a result, the time punches of Plaintiff and other similarly situated employees reflected
13 meal periods of a full thirty (30) minutes even when the employee did not receive a full thirty (30) minute
14 meal period.

15 35. Defendants further maintained a policy that employees were not permitted to be away from
16 their workstations for meal period for more than thirty (30) minutes.

17 36. Defendants also scheduled employees to begin and end their meal periods at the same time.
18 As a result, a long line would form at the time clock, and Plaintiff and other similarly situated employees
19 would be forced to wait in line in order clock out for their meal periods as well as end their meal periods
20 early to accommodate for the time they were required to wait in line and in order to return to their
21 workstation in no less than thirty (30) minutes. As a result, employees were denied compensation for the
22 time they were required to wait in line to clock back in at the conclusion of their meal periods.

23 37. The combination of Defendants' strict requirement that employees not be away from their
24 workstations for more than thirty (30) minutes, the fact that employees were required to wait in line several
25 minutes in order to clock in and clock out for meal periods, and the rounding of employees' meal period
26 time punches resulted in Plaintiff's and other similarly situated employees' systematic denial of off-duty
27 meal periods of at least thirty (30) minutes.

28 38. Defendants also had a pattern and practice of failing to authorize and permit Plaintiff and

1 other similarly situated employees to take legally compliant off-duty and uninterrupted rest periods of at
2 least ten (10) minutes for every four-hour work period, or major fraction thereof, because the demands of
3 the manufacturing factory prevented them from being relieved of all duties for a full uninterrupted ten
4 (10) minute period.

5 39. Although Plaintiff and other similarly situated employees were regularly denied compliant
6 meal and rest periods, Defendants did not compensate Plaintiff and other similarly situated employees an
7 additional hour of pay at their regular rate of compensation for all times that they were not provided meal
8 periods or authorized or permitted to take compliant rest periods, in violation of Labor Code § 226.7.

9 40. Following the onset of the Covid-19 Pandemic, Defendants implemented a system whereby
10 Plaintiff and other similarly situated employees used their personal cellular phones to clock in and clock
11 out for work. As result, they were required to have a cellular phone and use the data on their cellular phone
12 to clock in and clock out in order to comply with Defendants' safety protocols. In spite of the fact that
13 Plaintiff and similarly situated employees incurred expenses from the use of their personal cellular phones,
14 Defendants failed to reimburse them for the business use of their personal cell phone.

15 41. As a direct consequence of Defendants' illegal policies as described herein, Defendants did
16 not keep accurate records of the actual hours that Plaintiff and other similarly situated employees were
17 under the control of Defendants as well as all wages earned. Defendants failed to keep accurate records
18 of Plaintiff's and other similarly situated employees' hours worked when Defendants failed to accurately
19 record the proper beginning and ending of each work day and meal period, in addition to the total hours
20 worked during the pay period, among others.

21 42. Defendants similarly failed to provide Plaintiff and other similarly situated employees with
22 accurate itemized wage statements. For example, during the applicable statutory period, Defendants failed
23 to furnish Plaintiff and other similarly situated employees with itemized wage statements that included
24 the total regular and overtime hours worked during the pay period, the applicable hourly rates and the
25 corresponding number of hours worked at each hourly rate, and the correct amount of gross and net wages
26 earned.

27 43. To date, Defendants have not paid Plaintiff and other similarly situated employees all
28 wages owed, including all minimum, regular, and overtime wages, as well as all meal and rest period

1 premium wages.

2 44. Defendants maintained a pattern and practice of failing to pay Plaintiff and other similarly
3 situated employees all wages due and owing at the time of their separation of employment within the time
4 specified by Labor Code §§ 201 and 202 because Defendants failed to pay Plaintiff and other similarly
5 situated employees all wages due and owing at the time of discharge of their employment.

6 45. Based on the foregoing violations of the Labor Code and the applicable IWC Wage Order,
7 Defendants engaged in unfair business practices in California and willingly and knowingly engaged in an
8 employment pattern and practice that violated Business & Professions Code § 17200 *et seq.* Plaintiff and
9 other similarly situated employees suffered damages due to Defendants' unfair, unlawful and/or fraudulent
10 actions.

11 V.

12 **CLASS ACTION DESIGNATION**

13 46. Plaintiff re-alleges and incorporates by reference the allegations contained in the
14 paragraphs above, as though fully set forth herein.

15 47. Plaintiff brings Causes of Action One through Nine as a Class Action pursuant to California
16 Code of Civil Procedure § 382 on behalf of himself and all current and former non-exempt employees of
17 Defendants who were affected by Defendants' Labor Code, Business and Professions Code, and IWC
18 Wage Order violations, as alleged herein.

19 48. Plaintiff seeks to represent the following Classes, which are defined as:

20 **The Non-Exempt Class:**

21 "All current and former non-exempt employees who worked for Defendants
22 in the State of California at any time during the four years preceding the
23 filing of this Complaint."

24 49. Plaintiff also seeks to represent the following Subclass, which is defined as:

25 **The Waiting Time Penalties Subclass:**

26 "All members of the Non-Exempt Class, whose employment with
27 Defendants ended at any time during the three years preceding the filing of
28 this Complaint."

1 50. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiff reserves
2 the right to amend or modify the class definitions with greater specificity, by further division into
3 subclasses, and/or limitation to particular issues.

4 51. Causes of Action One through Nine are appropriately suited for a class action pursuant to
5 § 382 of the Code of Civil Procedure because the following requirements are met:

6 **A. Numerosity**

7 52. The members of the Classes and Subclass are sufficiently numerous to render the joinder
8 of all their members impracticable. While Plaintiff has not yet determined the precise number of members
9 of the Classes and Subclass, Plaintiff is informed and believes that the Classes and Subclass likely consist
10 of over 25 individuals. Although the exact number is currently unknown to Plaintiff, this information is
11 easily ascertainable from Defendants' time and payroll records and other personnel records.

12 **B. Commonality and Predominance**

13 53. Common questions of law and fact exist as to all class members and predominate over any
14 questions affecting only individual members of the Classes or Subclass. The common questions of law
15 and fact that predominate include, but are not limited to:

- 16 a. Whether Defendants failed to permit Non-Exempt Class members to take a duty-
17 free, thirty-minute meal period before the commencement of the sixth hour of work;
- 18 b. Whether Defendants failed to permit Non-Exempt Class members to take off-duty
19 rest periods of at least 10 minutes for every four hours worked, or major fraction
20 thereof;
- 21 c. Whether Defendants failed to pay one additional hour of pay at the employees'
22 regular rate of compensation to Non-Exempt Class members when they were not
23 provided with compliant and timely meal and rest periods;
- 24 d. Whether Defendants failed to pay Non-Exempt Class members at least minimum
25 wages and/or all regular wages owed for all hours suffered or permitted to permit
26 work under the control of Defendants;
- 27 e. Whether Defendants failed to pay Non-Exempt Class members all overtime wages
28 for all hours suffered or permitted to permit work under the control of Defendants;

- f. Whether Defendants failed to indemnify Non-Exempt Class members for necessary business expenses incurred in direct consequence of the discharge of their duties;
- g. Whether Defendants failed to properly and accurately record and maintain records of all hours worked and wages earned by Non-Exempt Class members;
- h. Whether Defendants failed to provide Non-Exempt Class members with accurate itemized wage statements showing, among other things, the number of hours worked and the correct amount of gross and net wages earned; and
- i. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of their wages owed within the required time frames upon separation of employment.

C. Typicality

54. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all class members' claims arise from the same event, practice and/or course of conduct of Defendants. Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

55. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order are typical of the Classes and Subclass because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all class members are the same.

D. Adequacy of Representation

56. Plaintiff has no fundamental conflict of interest with the Classes or Subclass Plaintiff seeks to represent. Plaintiff will adequately protect the interests of all class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to her and putative class members.

57. Plaintiff retained attorneys who are experienced employment law litigators with significant wage and hour and class action experience.

E. Superiority of Class Action

58. Plaintiff believes a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable. Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

59. Plaintiff knows of no difficulty that might be encountered in the management of this suit, which would preclude maintenance as a class action.

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7, 512, and 1198 and the “Meal Periods” section of the
Applicable IWC Wage Order)

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

60. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

61. Labor Code § 512(a) provides, in part, that employers, including Defendants, “may not employ an employee for a work period of more than five hours per day without providing an employee with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

62. Labor Code § 226.7 requires that employers, including Defendants, provide their employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare Commission, and prohibits employers from requiring any employee “to work during any meal ... period mandated by an applicable order of the Industrial Welfare Commission.” Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a meal ... period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal ... period is not provided.”

63. Labor Code § 1198 states that the “maximum hours of work and standard conditions of

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

64. The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” It further states, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.”

65. The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

66. The “Meal Periods” section of the applicable IWC Wage Order also states, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

67. Plaintiff and the Non-Exempt Class were subject to the same policies, practices, and procedures governing the provision and scheduling of meal periods.

68. Defendants have a pattern and practice of not providing Plaintiff and the Non-Exempt Class with legally compliant 30-minute off-duty meal periods during their shifts, even though they worked more than six (6) hours during their workday.

69. Plaintiff and the Non-Exempt Class members did not sign a valid on-duty meal period agreement at any point during their employment with Defendants.

1 70. Plaintiff and the Non-Exempt Class typically worked more than six (6) hours per day and
2 did not properly waive any of their meal periods.

3 71. Therefore, as a result of Defendants' conduct, including the conduct alleged herein,
4 Defendant violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order when
5 Defendants failed to provide Plaintiff and the Non-Exempt Class members a 30-minute, duty-free meal
6 period before the commencement of their sixth hour of work, and a second 30-minute, duty-free meal
7 period before the commencement of their eleventh hour of work.

8 72. Consequently, pursuant to Labor Code § 226.7(b) and the "Meal Periods" section of the
9 Wage Order, Defendants were required to pay Plaintiff and the Non-Exempt Class one additional hour of
10 pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the
11 Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour
12 of work or a second 30-minute, duty-free meal period before the commencement of their eleventh hour of
13 work.

14 73. Despite this obligation, Defendants did not pay Plaintiff and the Non-Exempt Class one
15 additional hour of pay at each employee's regular rate of compensation for each day that Defendants did
16 not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free meal period before the
17 commencement of their sixth hour of work or a second 30-minute, duty-free meal period before the
18 commencement of their eleventh hour of work.

19 74. Instead, Defendants have a common policy and practice of failing to compensate Plaintiff
20 and the Non-Exempt Class with an hour of pay at their regular rate of compensation for the times that
21 Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free meal period
22 before the commencement of their sixth hour of work or a second 30-minute, duty-free meal period before
23 the commencement of their eleventh hour of work, as required by Labor Code § 226.7(b) and the IWC
24 Wage Order.

25 75. Thus, Defendants intentionally refused to perform its obligations to provide meal periods
26 and further failed to compensate Plaintiff and the Non-Exempt Class with all owed meal premium wages
27 as set forth by Labor Code § 226.7(b) and the IWC Wage Order.

28 76. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to

Defendants' failure to pay an additional hour of pay for each day a legally compliant meal period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

77. Plaintiff seeks all available remedies for Defendants' violations, including, but not limited to, all wages due, monies, and interest to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7 and 1198 and the "Rest Periods" section of the
Applicable IWC Wage Order)

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

78. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

79. Labor Code § 226.7 requires employers, including Defendants, to provide to their employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

80. Labor Code § 1198 states that the "maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

81. The "Rest Periods" section of the applicable IWC Wage Order states, "[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." It further states, "[a]uthorized rest period time shall be counted as hours worked for which there shall be no deduction from wages." Furthermore, "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

82. Plaintiff and the Non-Exempt Class were subject to the same policies, practices, and procedures governing the provision and scheduling of rest periods.

83. Plaintiff and the Non-Exempt Class were not authorized and permitted to take compliant rest periods.

84. Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a ... rest ... period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest ... period is not provided.”

85. Even though Plaintiff and Non-Exempt Class members were not authorized and permitted to take off-duty rest periods of at least 10 minutes for each four-hour work period or major fraction thereof, Defendants did not pay Plaintiff and the Non-Exempt Class appropriate rest period premium wages for each day in which Defendants did not authorize and permit Plaintiff and the Non-Exempt Class to take compliant rest periods, in violation of Labor Code § 226.7 and the applicable IWC Wage Order.

86. Defendants have a common policy, pattern, and practice of failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay for the times that Plaintiff and the Non-Exempt Class were not authorized to take rest periods of at least 10 minutes for each four-hour work period, or major fraction thereof.

87. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to Defendants’ failure to pay an additional hour of pay for each day a rest period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants’ Labor Code and IWC Wage Order violations.

88. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited to any and all wages due, monies, and interest, to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

THIRD CAUSE OF ACTION

FAILURE TO PAY MINIMUM AND REGULAR WAGES

(Violation of Labor Code §§ 1194, 1197, and 1198 and the “Minimum Wages” section of the Applicable IWC Wage Order)

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

89. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

90. Labor Code § 1197 provides, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum wage so fixed is unlawful.”

91. The “Minimum Wages” section of the applicable IWC Wage Order provides that an employer may not pay employees less than the applicable minimum for all hours worked.

92. The applicable IWC Wage Order defines the term “hours worked” 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.”

93. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

94. Defendants failed to pay Plaintiff and Non-Exempt Class members at least minimum wages for all the time spent working and under the control of Defendants.

95. Labor Code § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney’s fees, and costs of suit.

96. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.

97. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

98. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited to, any and all wages due, monies, interest, liquidated damages, attorney’s fees, and costs to the extent

1 permitted by law.

2 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGES**

5 (Violation of Labor Code §§ 510, 1194, and 1198, and the “Hours and Days of Work” section of the
6 Applicable IWC Wage Order)

7 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

8 99. Plaintiff re-alleges and incorporates by reference the allegations contained in the
9 paragraphs above, as though fully set forth herein.

10 100. Labor Code § 510 provides, “[a]ny work in excess of eight hours in one workday and any
11 work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of
12 work in any one workweek shall be compensated at the rate of no less than one and one-half times the
13 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at
14 the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of
15 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the
16 regular rate of pay of an employee.” The “Hours and Days of Work” section of the applicable IWC Wage
17 Order mandate the same requirements.

18 101. Labor Code § 1194 provides that any employee receiving less than the legal overtime
19 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
20 full amount of this overtime compensation, including interest thereon, reasonable attorney’s fees, and
21 costs of suit.

22 102. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the
23 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
24 standard conditions of labor for employees. The employment of any employee for longer hours than those
25 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

26 103. The applicable IWC Wage Order defines the term “hours worked” as “the time during
27 which an employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so.”

104. In California, overtime is computed based on the regular rate of pay. The regular rate of pay includes all different types of remuneration, including hourly earnings, salary, piecework earnings, commissions, and non-discretionary bonuses, and the value of meals and lodging.

105. Plaintiff and the Non-Exempt Class regularly worked over eight hours per day and 40 hours per week while employed by Defendants. Plaintiff and the Non-Exempt Class did not receive all overtime compensation owed for all overtime hours worked over eight hours per day and/or 40 hours per week during their employment with Defendants.

106. Defendants failed to pay Plaintiff and Non-Exempt Class members at the proper overtime rate for all the time spent working and under the control of Defendants because Defendants failed to pay them for hours worked in excess of eight in a day and forty in a week.

107. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

108. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES

(Violation of Labor Code § 2802)

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

109. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

110. Labor Code § 2802 requires an employer to indemnify its employees for all necessary expenditures or losses incurred by an employee in direct consequence of the discharge of his or her duties of employment.

111. Labor Code § 2802(b) states, "[a]ll awards made by a court ... for reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in civil actions, and said interest

1 will accrue from the date on which the employee incurred the necessary expenditure including, but not
2 limited to, reasonable costs and attorney's fees incurred by the employee in enforcing their rights granted
3 pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount
4 to be proven at time of trial.

5 112. Furthermore, Labor Code § 2802(c) states, "[f]or the purposes of this section, the term
6 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to,
7 attorney's fees incurred by the employee enforcing the rights granted by this section."

8 113. Plaintiff and members of the Non-Exempt Class incurred business expenses in direct
9 consequence of their job duties. Despite Defendants' knowledge that Plaintiff and members of the Non-
10 Exempt Class incurred business expenses in direct consequence of their job duties, Defendants failed to
11 provide appropriate reimbursement for these expenses, in violation of Labor Code § 2802.

12 114. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the
13 Non-Exempt Class suffered and continue to suffer, substantial losses related to Defendants' failure to
14 indemnify them for the expenses and losses, including the use and enjoyment of such monies, lost interest
15 on such monies and expenses, and attorney's fees and costs in seeking to compel Defendants to fully
16 perform its obligations under state law, all to their respective damage in amounts according to proof at
17 trial and within the jurisdictional limitations of this Court.

18 115. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available
19 remedies including but not limited to the unpaid balance of the indemnification from Defendants'
20 violations, interest thereon permitted by Labor Code § 2802(b), reasonable attorney's fees and costs of
21 suit, declaratory relief, and any other permitted remedies including those permitted pursuant to Labor
22 Code § 2802 and Code of Civil Procedure § 1021.5. The exact amount of reimbursements, interest, costs
23 and attorney's fees will be in an amount to be proved at time of trial.

24 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO MAINTAIN ACCURATE RECORDS**

27 (Violation of Labor Code §§ 1174(d), 1198 and the "Records" section of the Applicable IWC Wage
28 Order)

(Alleged By Plaintiff Individually And On Behalf of the Non-Exempt Class Against Defendants)

116. Plaintiff re-alleges and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

117. Plaintiff and Non-Exempt Class members were non-exempt employees of Defendants in California within the meaning of the Labor Code and the applicable IWC Wage Order.

118. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

119. Labor Code § 1174(d) requires, in part, that employers, including Defendants, maintain payroll records showing the hours worked daily by their employees and to whom wages were paid.

120. Additionally, the “Records” section of the applicable IWC Wage Order obligates the employer, including Defendants, to keep accurate information with respect to each one of their employees including, but not limited to, the total wages paid each payroll period, and time records showing when the employee begins and ends each work period, meal periods, split shift intervals, the total daily hours worked, the total hours worked in the payroll period, and the applicable rates of pay.

121. Defendants violated Labor Code §§ 1174(d) and 1198 and the applicable Wage Order when they failed to keep accurate information regarding employees’ hours worked and record each employees’ meal periods.

122. Defendants intentionally failed to record Plaintiff’s and the Non-Exempt Class members’ beginning and ending times of all work periods, break periods, including meal periods, and the total hours they worked during the payroll period. In addition, Defendants frequently adjusted Plaintiff and other members of the Non-Exempt Class’ time records to reflect legally compliant meal periods with both constructive and actual knowledge that no compliant meal break had been taken by Plaintiff and other non-exempt employees.

123. Pursuant to Labor Code § 1174.5, any person employing labor who willfully fails to

maintain accurate and complete records required by Labor Code § 1174(d) is subject to a penalty. Defendants intentionally failed to maintain accurate records of the Non-Exempt Class members' total daily hours, including meal periods taken, the total hours worked in the payroll period, the applicable rates of pay, and total wages earned for the payroll period.

124. As a direct result of Defendants' violations alleged herein, Plaintiff and Non-Exempt Class members have suffered and continue to suffer substantial losses related to Defendants' failure to record and maintain records of meal periods and time records.

125. Plaintiff, individually and on behalf of the Non-Exempt Class, seeks all available remedies for Defendants' violations including, but not limited to injunctive relief, any and all penalties, attorney's fees, and costs to the extent permitted by law.

126. WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code §§ 226, 246, and 1198 and the "Records" section of the
Applicable IWC Wage Order)

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

127. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

128. Labor Code § 226(a) requires that employers, including Defendants, furnish their employees with each wage payment an accurate and itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

129. Labor Code § 246(i) states that "[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides

1 in lieu of sick leave, for use on either the employee's itemized wage statement described in § 226 or in a
2 separate writing provided on the designated pay date with the employee's payment of wages."

3 130. Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of
4 all actual damages or the amount specified in Labor Code § 226 per violation.

5 131. Labor Code § 226(e)(2)(B) states, in pertinent part, "an employee is deemed to suffer injury
6 for purposes of this subdivision if the employer fails to provide accurate and complete information as
7 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
8 promptly and easily determine from the wage statement alone one or more of the following: (i) The amount
9 of the gross wages or net wages paid to the employee during the pay period or any of the other information
10 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9)
11 of subdivision (a)."

12 132. Labor Code § 226(h) states, "An employee may also bring an action for injunctive relief to
13 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

14 133. Defendants knowingly and intentionally failed to provide Plaintiff and Non-Exempt Class
15 members an accurate itemized wage statement with each wage payment as required by Labor Code §
16 226(a). Defendants knowingly and intentionally failed to provide Plaintiff and members of the Non-
17 Exempt Class with each wage payment an accurate wage statement showing, among other things, the total
18 regular and overtime hours worked during the pay period, the corresponding gross and net wages earned,
19 and all applicable hourly rates and the corresponding number of hours worked at each hourly rate.

20 134. Defendants' failure to provide accurate wage statements deprived Plaintiff and members
21 of the Non-Exempt Class of the ability to promptly and easily understand and question the calculation and
22 rate of pay and hours used to calculate the wages paid by Defendants. Plaintiff and members of the Non-
23 Exempt Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all
24 of which resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members of the
25 Non-Exempt Class suffered actual damages as a result.

26 135. Defendants' failure to provide accurate itemized wage statements constitutes an injury as
27 defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and members of the Non-Exempt Class
28 have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all

1 actual damages or the amount specified in § 226 per violation.

2 136. Plaintiff and Non-Exempt Class members suffered and continue to suffer injuries, losses
3 and actual damages as a direct result of Defendants' Labor Code violations, including lost interest on such
4 wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligations,
5 in an amount to be shown according to proof at trial.

6 137. Plaintiff seeks to recover all available remedies including, but not limited to damages,
7 penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT**

11 (Violations of Labor Code §§ 201, 202, 203)

12 (Alleged By Plaintiff Individually and On Behalf of the Waiting Time Penalties Subclass Against
13 Defendants)

14 138. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 paragraphs above, as though fully set forth herein.

16 139. Labor Code § 201 requires Defendants to immediately pay any wages, without abatement
17 or reduction, to any employee who is discharged. Labor Code § 202 requires Defendants to pay any and
18 all wages due and owing to an employee not having a written contract for a definite period, who quits his
19 or her employment, within 72 hours of the employee quitting his or her employment, unless the employee
20 has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
21 to his or her wages at the time of quitting.

22 140. For violation of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid wages
23 of an employee to continue as a penalty from the due date thereof, at the same rate until paid or until an
24 action is commenced, but the wages shall not continue for more than 30 days.

25 141. As a result of Defendants' conduct during the applicable statutory period, Defendants
26 willfully failed to pay Plaintiff and the Waiting Time Penalties Subclass all wages due and owing to them,
27 including minimum wages, overtime wages, and regular wages for all the time they were suffered or
28 permitted to work or were engaged in work under Defendants' control and all meal period premiums and

rest period premiums owed within the time required by Labor Code §§ 201 and 202, as applicable.

142. To date, Plaintiff has not yet received all wages due and payable, including but not limited to, minimum wages, overtime wages, regular wages, and meal and rest period premium wages owing to Plaintiff.

143. Members of the Waiting Time Penalties Subclass have not yet received all minimum wages, overtime wages, regular wages, and meal and rest premium wages due and owing to them.

144. As a direct result of Defendants' violations alleged herein, Plaintiff and the Waiting Time Penalties Subclass members suffered and continue to suffer losses related to the use and enjoyment of wages due and owing to them, all to their respective damage in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

145. Plaintiff seeks all available remedies for Defendants' violations to the fullest extent permissible.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

146. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

147. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..."

148. Defendants' Labor Code and IWC Wage Order violations alleged herein constitute "unlawful, unfair or fraudulent business act or practices," which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant meal periods; (ii) failure to provide proper rest periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant rest periods; (iii) failure to pay Plaintiff and the Non-Exempt Class all regular, minimum, and overtime wages for all hours suffered or permitted to work and under the control of Defendants; (iv) failure to indemnify Plaintiff and the Non-Exempt Class for necessary business

1 expenses incurred in direct consequence of the discharge of their duties and under the direction of
2 Defendants; (iv) failure to maintain accurate records of the hours that Plaintiff and the Non-Exempt Class
3 worked while employed by Defendants; (vi) failure to provide Plaintiff and the Non-Exempt Class with
4 accurate itemized wage statements; and (vii) failure to timely pay Plaintiff and members of the Waiting
5 Time Penalties Subclass all wages owed upon separation of their employment with Defendants.

6 149. Defendants intentionally avoided paying Plaintiff and the Non-Exempt Class wages and/or
7 monies, and other financial obligations attached thereto, to create for Defendants an artificially lower cost
8 of doing business, and thus, undercut its competitors.

9 150. Defendants lowered its costs of doing business by paying Plaintiff and the Non-Exempt
10 Class an amount less than what is required by the California Labor Code and the applicable Wage Order
11 of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and other similarly situated
12 employees to perform work without fair compensation and benefits.

13 151. Defendants held itself out to Plaintiff and the Non-Exempt Class as being knowledgeable
14 about, and adhering to, the employment laws of California at all times relevant herein. Plaintiff and the
15 Non-Exempt Class relied on and believed in Defendants' representation concerning Defendants'
16 adherence to the California laws, all to their detriment.

17 152. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding
18 money owed to the class and withholding wages, compensation and benefits, which are all the property
19 of Plaintiff and the Non-Exempt Class in violation of the California Labor Code and the IWC Wage
20 Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under
21 California Business and Professions Code § 17200, *et seq.* As a result of Defendants' unfair competition,
22 Plaintiff and the Non-Exempt Class suffered injury in fact by losing money and/or property.

23 153. Business and Professions Code § 17204, states, in relevant part, "[a]ctions for relief
24 pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost
25 money or property as a result of the unfair competition."

26 154. Defendants acquired money and property owed to Plaintiff and the Non-Exempt Class by
27 means of an unlawful practice that constitutes unfair competition as defined by Business and Professions
28 Code § 17200, *et seq.*

156. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and benefits, as a result of Defendants' unfair competition. Thus, pursuant to Business and Professions Code §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of Plaintiff and the putative classes.

157. Pursuant to Business and Professions Code § 17203, “[t]he court may make such orders or judgments, as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.”

158. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the Non-Exempt Class by committing the unlawful acts alleged herein. Thus, Defendants must make restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203 and restore all unpaid wages to Plaintiff and the Non-Exempt Class.

159. Plaintiff and the Non-Exempt Class suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

160. Plaintiff seeks all available remedies on behalf of himself and on behalf of the Non-Exempt Class including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code § 17205.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- a. For general damages;
- b. For special damages;
- c. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;

- d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 218.6, 226, 1194, 2802, and 2699;
- e. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- f. For restitution as provided by Business and Professions Code § 17200, *et seq.*;
- g. For an order requiring Defendant to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200, *et seq.*;
- h. For an award of damages in the amount of unpaid compensation and monies including, but not limited to actual damages, unpaid wages, minimum wages, regular wages, overtime wages, vacation wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;
- i. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal and rest period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;
- j. For an award of the greater of actual damages or the liquidated damage amounts provided by Labor Code § 226(e) for Defendant's failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);
- k. For injunctive relief as provided by the Labor Code including but not limited to Labor Code § 226(h), and Business and Professions Code § 17200, *et seq.*
- l. For indemnification of all losses incurred as a result of employment with Defendant, with interest;
- m. For pre- and post-judgement interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- n. For an order imposing a constructive trust upon Defendant to compel it to transfer

wages that have been wrongfully obtained and held by Defendant to unpaid employees;

- o. For an accounting to determine all money wrongfully obtained and held by Defendant;
- p. For a declaratory judgment that Defendant violated Labor Code §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1197, 1198, and 2802, as well as the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the Industrial Welfare Commission; and
- q. An award of such other and further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

Dated: April 21, 2021

GRAHAMHOLLIS APC

By: 
GRAHAM S.P. HOLLIS
NATHAN REESE
Attorneys for Plaintiff PEPE MALVEDA