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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

PEDRO RAMOS, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

GEORG FISCHER HARVEL LLC, a
Pennsylvania limited liability company;
GEORG FISCHER INC., an unknown
business entity; GEORG FISCHER LLC, a
California limited liability company;
GEORG FISCHER CENTRAL PLASTICS
LLC, an Oklahoma limited liability
company; GEORG FISCHER SIGNET
LLC, a California limited liability
company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BCV-21-101437

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Pedro Ramos, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as non-exempt, hourly paid
8 employees (“non-party Aggrieved Employees”) and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notices to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on April 16, 2021, until judgment. Plaintiff’s share of civil penalties
14 sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in Bakersfield, County of Kern, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions, occurrences, and/or violations related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff PEDRO RAMOS is a resident of Bakersfield, in Kern County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Extruder Operator from approximately November 1998 to April 2020. Plaintiff worked for Defendants at their location in Bakersfield, California. During his employment, Plaintiff typically worked eight (8) hours or more per day, and five (5) or more days per week. Plaintiff's primary job duties included, without limitation, operating machinery, monitoring the production line, completing paperwork outlining orders, packaging PVC pipes, and maintaining the warehouse premises.

7. GEORG FISCHER HARVEL LLC was and is, upon information and belief, a Pennsylvania limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

8. GEORG FISCHER INC. was and is, upon information and belief, an unknown business entity, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

9. GEORG FISCHER LLC was and is, upon information and belief, a California

1 limited liability company, and at all times hereinafter mentioned, an employer whose
2 employees are engaged throughout this county, the State of California, or the various states of
3 the United States of America.

4 10. GEORG FISCHER CENTRAL PLASTICS LLC was and is, upon information
5 and belief, an Oklahoma limited liability company, and at all times hereinafter mentioned, an
6 employer whose employees are engaged throughout this county, the State of California, or the
7 various states of the United States of America.

8 11. GEORG FISCHER SIGNET LLC was and is, upon information and belief, a
9 California limited liability company, and at all times hereinafter mentioned, an employer
10 whose employees are engaged throughout this county, the State of California, or the various
11 states of the United States of America.

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

16 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of GEORG FISCHER HARVEL LLC,
18 GEORG FISCHER INC., GEORG FISCHER LLC, GEORG FISCHER CENTRAL
19 PLASTICS LLC, and GEORG FISCHER SIGNET LLC at all relevant times.

20 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
21 acts and omissions alleged herein was performed by, or is attributable to, GEORG FISCHER
22 HARVEL LLC, GEORG FISCHER INC., GEORG FISCHER LLC, GEORG FISCHER
23 CENTRAL PLASTICS LLC, GEORG FISCHER SIGNET LLC, and/or DOES 1 through 10
24 (collectively, "Defendants" or "GEORG FISCHER"), each acting as the agent, employee,
25 alter ego, and/or joint venturer of, or working in concert as a single enterprise with, each of
26 the other co-Defendants and was acting within the course and scope of such agency,
27 employment, joint venture, or concerted activity as a single enterprise with legal authority to
28 act on the others' behalf. The acts of any and all Defendants were in accordance with, and

1 represent, the official policy of Defendants.

2 15. At all relevant times, Defendants, and each of them, ratified each and every act
3 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
4 and abetted the acts and omissions of each and all the other Defendants in proximately causing
5 the damages herein alleged.

6 16. Plaintiff is informed and believes, and thereon alleges, that each of said
7 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
8 omissions, occurrences, and transactions alleged herein.

9 17. Under California law, Defendants are jointly and severally liable as employers
10 for the violations alleged herein because they have each exercised sufficient control over the
11 wages, hours, working conditions, and employment status of Plaintiff and other non-party
12 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
13 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
14 of employment, determined their rate of pay, and maintained their employment records.
15 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
16 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
17 common-law employment relationship. As joint employers of Plaintiff and other non-party
18 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties and
19 all other relief available to Plaintiff and other non-party Aggrieved Employees under the law.

20 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
21 Defendants, and each of them, have acted as joint employers, or as a single enterprise, with
22 respect to Plaintiff and other non-party Aggrieved Employees because Defendants have:

- 23 (a) jointly exercised meaningful control over the work performed by
24 Plaintiff and other non-party Aggrieved Employees;
25 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
26 Aggrieved Employees’ wages, hours, and working conditions, including
27 the quantity, quality standards, speed, scheduling, and operative details
28 of the tasks performed by Plaintiff and other non-party Aggrieved

Employees;

- (c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants' businesses; and
- (d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiff and other non-party Aggrieved Employees and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

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

20. GEORG FISCHER HARVEL LLC, GEORG FISCHER INC., GEORG FISCHER LLC, GEORG FISCHER CENTRAL PLASTICS LLC, GEORG FISCHER SIGNET LLC, and DOES 1 through 10 are also therefore alter egos of each other.

21. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name GEORG FISCHER.

22. Plaintiff further alleges, upon information and belief, that Defendants GEORG FISCHER HARVEL LLC, GEORG FISCHER INC., GEORG FISCHER LLC, GEORG FISCHER CENTRAL PLASTICS LLC, GEORG FISCHER SIGNET LLC, are alter egos of each other for the following reasons:

- (e) On information and belief, GEORG FISCHER HARVEL LLC and GEORG FISCHER SIGNET LLC, share the same agent for service of process, "CHRISTINE WENDEL;"
- (f) On information and belief, GEORG FISCHER CORPORATION is the

parent company and managing entity of both GEORG FISCHER
CENTRAL PLASTICS LLC and GEORG FISCHER HARVEL LLC;

(g) On information and belief, GEORG FISCHER INC. shares an address
in El Monte, California with GEORG FISCHER SIGNET LLC; and

(h) On information and belief, GEORG FISCHER INC., GEORG
FISCHER LLC, GEORG FISCHER CENTRAL PLASTICS LLC,
GEORG FISCHER HARVEL LLC, and GEORG FISCHER SIGNET
LLC, utilize the same standardized employment forms and issue the
same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

23. Defendants are a leading global supplier of piping systems, lightweight casting components, and high-precision manufacturing technologies. Defendants operate several manufacturing plants in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their regional company headquarters in Bakersfield, El Monte, or Irvine, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

24. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

25. Upon information and belief, Defendants maintain a centralized Payroll department at their regional company headquarters in Bakersfield, El Monte, or Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for

1 Defendants at their various locations and jobsites in California, including Plaintiff and other
2 non-party Aggrieved Employees. Based upon information and belief, Defendants issue the
3 same formatted wage statements to all non-exempt, hourly paid employees in California,
4 irrespective of their work locations. Upon information and belief, Defendants process payroll
5 for departing employees in the same manner throughout the State of California, regardless of
6 the manner in which each employee's employment ends.

7 26. Defendants continue to employ non-exempt or hourly paid employees in
8 California.

9 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
11 and advisors knowledgeable about California labor and wage law, employment and personnel
12 practices, and about the requirements of California law.

13 28. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
14 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
15 were not recorded.

16 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 receive certain wages for overtime compensation and that they were not receiving certain
19 wages for overtime compensation.

20 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that other non-party Aggrieved Employees were entitled to be paid at a
22 regular rate of pay, and corresponding overtime rate of pay, that included as eligible income
23 all remuneration required by law, including but not limited to, all income derived from
24 incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

25 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 receive at least minimum wages for compensation and that they were not receiving at least
28 minimum wages for work that was required to be done off-the-clock. In violation of the

1 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
2 least minimum wages for work done off-the-clock.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 meal periods in accordance with the California Labor Code or payment of one (1) additional
6 hour of pay at their regular rates of pay when they were not provided with timely,
7 uninterrupted, thirty (30) minute meal periods and that Plaintiff and other non-party
8 Aggrieved Employees were not provided with all meal periods or payment of one (1)
9 additional hour of pay at their regular rates of pay when they did not receive a timely,
10 uninterrupted, thirty (30) minute meal period.

11 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
14 payment of one (1) additional hour of pay at their regular rates of pay when they were not
15 authorized and permitted to take a compliant rest period. In violation of the California Labor
16 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted
17 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party
18 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
19 pay when they were not authorized and permitted to take a compliant rest period.

20 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive complete and accurate wage statements in accordance with California law. In
23 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
24 were not provided complete and accurate wage statements.

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

1 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 timely payment of all wages earned upon termination of employment. In violation of the
4 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
5 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
6 and/or meal and rest period premiums, within permissible time periods.

7 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of wages during their employment. In violation of the California Labor Code,
10 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
11 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
12 premiums, within permissible time periods.

13 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that they had a duty to cover the costs and expenses other non-party
15 Aggrieved Employees incurred obtaining mandatory examinations and/or drug tests, but failed
16 to do so.

17 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that other non-party Aggrieved Employees were entitled to one day's rest
19 in seven. In violation of the California Labor Code, Defendants required other non-party
20 Aggrieved Employees to work more than six consecutive days without a day of rest, where the
21 total hours worked exceeded 30 hours in any week or six hours in any one day thereof.

22 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they had a duty to maintain, for Plaintiff and other non-party
24 Aggrieved Employees, a temperature in work areas that provided reasonable comfort
25 consistent with industry-wide standards for the nature of the process and the work performed,
26 and to take all feasible means to reduce excessive heat or humidity to a degree providing
27 reasonable comfort, but failed to do so.

28 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive full reimbursement for all business-related expenses and costs they incurred during the
3 course and scope of their employment and that they did not receive full reimbursement of
4 applicable business-related expenses and costs incurred.

5 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
7 and other non-party Aggrieved Employees with safety devices and safeguards to protect their
8 life, safety, and health in the workplace, but failed to do so.

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

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

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

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

27 47. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
28 employee, including Plaintiff, may pursue a civil action arising under PAGA after the

1 following requirements have been met:

- 2 (a) The aggrieved employee shall give written notice by online filing
3 (hereinafter "Employee's Notice") to the LWDA and by certified mail
4 to the employer of the specific provisions of the California Labor Code
5 alleged to have been violated, including the facts and theories to support
6 the alleged violations.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to
8 2699.3(a) and any employer response to that notice shall be
9 accompanied by a filing fee of seventy-five dollars (\$75).
- 10 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
11 employer and the aggrieved employee by certified mail that it does not
12 intend to investigate the alleged violation within sixty (60) calendar
13 days of the postmark date of the Employee's Notice. Upon receipt of
14 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
15 five (65) calendar days of the postmark date of the Employee's Notice,
16 the aggrieved employee may commence a civil action pursuant to
17 California Labor Code section 2699 to recover civil penalties in addition
18 to any other penalties to which the employee may be entitled.

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

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

2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

49. On April 16, 2021, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-829522-21. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated April 16, 2021, is attached hereto as "Exhibit 1."

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

51. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

52. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare
2 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
6 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
7 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
8 as a private attorney general, seek assessment and collection of civil penalties under Labor
9 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
10 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
11 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
12 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
13 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
14 applicable IWC Wage Order.

15 53. Defendants, at all times relevant to this complaint, were employers or persons
16 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
17 Employees’ rights by violating various sections of the California Labor Code as set forth
18 above.

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

22 55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
23 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
24 private attorney general, seek assessment and collection of civil penalties for himself, all other
25 non-party Aggrieved Employees, and the State of California against Defendants for violations
26 of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a),
27 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

28 //

1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

4 56. Plaintiff incorporates by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

6 57. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
9 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code
10 section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties
11 for violations of those Labor Code sections not found in section 2699.5, including sections
12 516, 1182.12, 6401, and 6403.

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

- 15 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiff and other
17 non-party Aggrieved Employees with all required overtime pay and
18 failure to properly calculate the overtime rates paid to other non-party
19 Aggrieved Employees, as set forth below;
- 20 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
21 the applicable IWC Wage Order for Defendants’ failure to compensate
22 Plaintiff and other non-party Aggrieved Employees with at least
23 minimum wages for all hours worked, as set forth below;
- 24 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
25 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
26 and other non-party Aggrieved Employees with meal periods, as set
27 forth below;
- 28 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to authorize and
2 permit Plaintiff and other non-party Aggrieved Employees to take rest
3 periods, as set forth below;

- 4 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
5 IWC Wage Order for failure to provide accurate and complete wage
6 statements to Plaintiff and other non-party Aggrieved Employees, as set
7 forth below;
- 8 (f) Violation of Labor Code section 204 for failure to pay all earned wages
9 during employment, as set forth below;
- 10 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
11 earned wages upon termination, as set forth below;
- 12 (h) Violation of Labor Code section 222.5 for failure to pay for costs of
13 mandatory physical exams and/or drug testing;
- 14 (i) Violation of Labor Code sections 551 and 552 for failure to provide one
15 day's rest in seven;
- 16 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
17 and other non-party Aggrieved Employees for all business expenses
18 necessarily incurred, as set forth below;
- 19 (k) Violation of Labor Code section 1198 for failure to maintain, for
20 Plaintiff and other non-party Aggrieved Employees, a temperature in
21 work areas that provided reasonable comfort consistent with industry-
22 wide standards for the nature of the process and the work performed,
23 and to take all feasible means to reduce excessive heat or humidity to a
24 degree providing reasonable comfort, as set forth below; and
- 25 (l) Violation of Labor Code sections 6401 and 6403 for failure to provide
26 safety devices and safeguards.

27 **FAILURE TO PAY OVERTIME**

28 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

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

10 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
11 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
12 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
13 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
14 hours in a workweek.

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

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

26 64. During the relevant time period, Defendants willfully failed to pay all overtime
27 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
28 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums

1 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
2 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
3 not recorded.

4 65. First, during the relevant period, Defendants had a company-wide policy and/or
5 practice of improperly rounding employees' clock-in and clock-out times in their timekeeping
6 system to the nearest tenth (0.1) of an hour. Defendants' rounding policy resulted in the
7 failure to compensate Plaintiff and other non-party Aggrieved Employees fully for all hours
8 worked, causing Plaintiff and other non-party Aggrieved Employees to not be paid overtime
9 wages for all of the overtime hours they actually worked. Defendants' policy of rounding is
10 unfair and has, over time, resulted in the underpayment of wages to Plaintiff and other non-
11 party Aggrieved Employees. To the extent Defendants' rounding policy has taken away time
12 worked that was eligible for overtime, Plaintiff and other non-party Aggrieved Employees
13 were denied overtime pay for all hours worked.

14 66. Second, during the relevant period, Defendants had a policy and/or practice of
15 discouraging and impeding Plaintiff and other non-party Aggrieved Employees from
16 recording hours worked that were outside of their scheduled shifts, in order to limit the
17 amount of overtime employees could accrue. On information and belief, this policy of
18 limiting overtime, coupled with Defendants' practice of understaffing and assignment of
19 heavy workloads (*see infra*), led Plaintiff and other non-party Aggrieved Employees to work
20 off-the-clock before and after their scheduled shift times in order to complete their assigned
21 tasks. For example, 1-2 times per week, Plaintiff typically spent 5-10 minutes assisting other
22 employees with cutting and processing piping before being permitted to clock in for his
23 scheduled shift. In addition, once or twice per week, Plaintiff was required to clock out and
24 continue working for 60-90 minutes, performing tasks such as cleaning the warehouse and
25 boxing up defective pipes for recycling.

26 67. Third, Defendants implemented, on a company-wide basis, an employer-
27 imposed requirement that Plaintiff and other non-party Aggrieved Employees undergo
28 mandatory health screenings and temperature checks before their scheduled shifts. Plaintiff

1 and other non-party Aggrieved Employees waited in line, for several minutes per instance, to
2 undergo the mandatory health screenings before Defendants permitted them to clock in for
3 their shifts, but Defendants did not compensate them for the time they remained under
4 Defendants' control. Further, Defendants only provided Plaintiff and other non-party
5 Aggrieved Employees with two (2) access points to their timekeeping system, but the
6 machines frequently malfunctioned, thus exacerbating the amount of time Plaintiff and other
7 non-party Aggrieved Employees waited in line, off-the-clock, and under Defendants' control,
8 time for which they were not paid.

9 68. Fourth, Defendants had, and continue to have, a company-wide policy and/or
10 practice of requiring Plaintiff and other non-party Aggrieved Employees to perform tasks off-
11 the-clock, such as responding to phone communications from supervisors and other employees
12 regarding work related matters. For example, Plaintiff and other non-party Aggrieved
13 Employees were required to use their personal cellular phones to complete their work-related
14 duties, such as communicating with supervisors and other employees regarding status reports
15 on the production line. Defendants failed to track this time Plaintiff and other non-party
16 Aggrieved Employees spent working off-the-clock, and thus, Plaintiff and other non-party
17 Aggrieved Employees received no compensation for this time.

18 69. Fifth, during the relevant period, Defendants had, and continue to have, a
19 company-wide policy and/or practice of understaffing their worksites while assigning heavy
20 workloads, including pressure to meet deadlines and production requirements. Defendants
21 also had a practice of failing to schedule meal periods, which further caused Plaintiff and
22 other non-party Aggrieved Employees to not be relieved of their duties for compliant meal
23 periods. Defendants' policies and/or practices resulted in a failure to provide Plaintiff and
24 other non-party Aggrieved Employees with adequate meal period coverage, and thus, Plaintiff
25 and other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute
26 meal periods during shifts when they were entitled to receive a meal period. For example, for
27 approximately 10 minutes per shift, Plaintiff's meal period would be interrupted to resolve
28 issues with power outages, production issues, or equipment malfunctions in order to ensure

1 that the production lines were operating at all times. Thus, Plaintiff and other non-party
2 Aggrieved Employees missed and/or had meal periods interrupted or cut short in order to
3 complete their assigned workloads and meet production requirements. Defendants did not pay
4 Plaintiff and other non-party Aggrieved Employees for the time they continued to perform
5 tasks during meal periods.

6 70. Additionally, because Defendants frowned upon employees accruing meal
7 period penalties, Defendants' management pressured Plaintiff and other non-party Aggrieved
8 Employees to clock out for meal periods and/or adjusted employee time records to reflect
9 compliant meal periods, regardless of whether they had actually received a compliant meal
10 period, in order to strictly limit meal penalties that Defendants would otherwise owe. For
11 example, Plaintiff was pressured by Defendants' management to clock out and record
12 compliant meal periods on shifts when he had not, in fact, received a compliant meal period.
13 Thus, Defendants did not all record hours worked during meal periods and Plaintiff and other
14 non-party Aggrieved Employees performed work during meal periods for which they were not
15 paid.

16 71. Defendants knew or should have known that as a result of these company-wide
17 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
18 their assigned duties off-the-clock before and after their shifts and during meal periods, and
19 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
20 and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more or
21 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
22 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
23 overtime wages for all of the overtime hours they actually worked.

24 72. Furthermore, on information and belief, Defendants did not pay other non-party
25 Aggrieved Employees the correct overtime rate for the recorded overtime hours that they
26 generated. In addition to an hourly wage, Defendants paid other non-party Aggrieved
27 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. For
28 example, Defendants paid other non-party Aggrieved Employees nondiscretionary bonuses

1 based on the company's performance. However, in violation of the California Labor Code,
2 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
3 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
4 purposes of calculating the overtime wage rate. Therefore, during times when other non-party
5 Aggrieved Employees worked overtime and received these other forms of pay, Defendants
6 failed to pay all overtime wages by paying a lower overtime rate than required.

7 73. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
8 the balance of overtime compensation as required by California law, violates the provisions of
9 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
10 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
11 558 and/or 2699(a), (f), and (g).

12 **FAILURE TO PAY MINIMUM WAGES**

13 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

14 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
15 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
16 to be paid to employees, and the payment of a wage less than the minimum so fixed is
17 unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time
18 during which an employee is subject to the control of an employer, and includes all the time
19 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
20 Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

21 75. As stated, Defendants had a company-wide policy and/or practice of rounding
22 Plaintiff's and other non-party Aggrieved Employees' hourly clock-in and clock-out times in
23 their timekeeping system to the nearest tenth of an hour, resulting in the failure to compensate
24 them for all hours worked. Also, due to Defendants' restrictions on overtime accrual,
25 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
26 for actual hours worked before and after scheduled shifts, because these hours were not
27 accurately recorded. As stated, because Defendants discouraged and impeded Plaintiff and
28 other non-party Aggrieved Employees from recording hours worked that were outside of their

1 scheduled shifts, Plaintiff and other non-party Aggrieved Employees were required to work
2 off-the-clock before and/or after their scheduled shift start and end times, completing assigned
3 job duties, submitting themselves to off-the-clock health screenings, waiting to clock-in at the
4 timekeeping machines, and communicating with supervisors on their personal cellular phones
5 regarding work-related matters.

6 76. Additionally, as set forth above, due to Defendants' uniform practice of
7 understaffing, assignment of heavy workloads, pressure to meet deadlines and production
8 requirements, failure to schedule meal periods, and the resulting lack of coverage, Plaintiff
9 and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal
10 periods to which they were entitled and were required to work off-the-clock. Moreover, as
11 stated, in order to prevent employees from accruing meal period penalties, Defendants'
12 management pressured Plaintiff and other non-party Aggrieved Employees to clock out for
13 meal periods and/or adjusted employee time records to reflect compliant meal periods, but
14 required them to continue working, time for which they were not paid. Thus, Defendants
15 systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual
16 hours worked during unpaid meal periods because these hours were not always correctly
17 recorded.

18 77. Moreover, Defendants maintained and implemented a company-wide policy of
19 requiring employees to travel to a medical facility on their own time and using their own
20 personal vehicles or alternate transportation to undergo mandatory drug testing and/or
21 physical examinations. At all times, Defendants were in control of scheduling the dates and
22 times for the testing and/or examinations, selecting the providers/clinics where the testing
23 and/or examinations were to take place, and determining the scope of the testing and/or
24 examinations. Defendants gave other non-party Aggrieved Employees strict instructions to
25 obtain testing and/or physical examinations, and other non-party Aggrieved Employees
26 underwent the testing and/or examinations for the sole benefit of Defendants. Other non-party
27 Aggrieved Employees were required to travel in their own personal vehicles or obtain
28 alternate transportation and spend time undergoing GF's mandatory drug tests and/or physical

1 examinations. However, Defendants did not compensate other non-party Aggrieved
2 Employees for the time they spent traveling to and from the medical clinics or for the time
3 they spent undergoing the drug testing and/or physical examinations.

4 78. Defendants did not pay minimum wages for all hours by Plaintiff and other
5 non-party Aggrieved Employees. To the extent that these off-the-clock hours did not qualify
6 for overtime premium payment, Defendants did not pay at least minimum wages for those
7 hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
8 1197, and 1198.

9 79. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
10 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
11 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
12 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

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

25 82. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
26 the applicable IWC Wage Order also require employers to provide a second meal period of
27 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
28 employee one (1) additional hour of pay at the employee's regular rate, except that if the total

1 hours worked is no more than twelve (12) hours, the second meal period may be waived by
2 mutual consent of the employer and the employee only if the first meal period was not waived.

3 83. During the relevant time period, as stated, Defendants had, and continue to
4 have, a company-wide policy and/or practice of understaffing while assigning heavy
5 workloads, including pressure to meet deadlines and production requirements. Further,
6 Defendants had a company-wide practice of failing to schedule meal periods for Plaintiff and
7 other non-party Aggrieved Employees, pursuant to a written policy which states “these [meal]
8 breaks are not scheduled, but will be taken as needed[,]” resulting in Plaintiff and other non-
9 party Aggrieved Employees having their meal periods cut short to return to work or waiting
10 extended periods of time before taking meal periods, due to the heavy workload and lack of
11 coverage. Defendants’ practices and policies prevented Plaintiff and other non-party
12 Aggrieved Employees from taking all compliant meal periods to which they were entitled.

13 84. As a result, Plaintiff and other non-party Aggrieved Employees would be
14 forced to work in excess of five (5) hours before taking a meal period and, at times, had their
15 meal periods cut short and/or had to forgo their meal periods altogether. For example,
16 Plaintiff took his meal periods late, after the end of his sixth or seventh hour of work, in order
17 to finish his assigned duties. In addition, Plaintiff’s meal periods were interrupted or cut short
18 by 10 minutes per instance to resolve issues with power outages, production issues, or
19 equipment malfunctions in order to ensure that the production lines were operating at all
20 times.

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

1 periods. Moreover, Defendants' company-wide policy and/or practice of improperly rounding
2 employees' meal period clock-in and clock-out time durations in their timekeeping system to
3 the nearest tenth (.1) of an hour resulted in the failure to accurately account for meal periods
4 which were late and/or shortened, further causing Plaintiff and other non-party Aggrieved
5 Employees to not be paid premiums for non-compliant meal periods.

6 86. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
7 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
8 hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) hours
9 or more hours per day but was not provided an uninterrupted second 30-minute meal period.
10 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
11 days that they were entitled to meal periods and were not relieved of all duties.

12 87. At all times herein mentioned, Defendants knew or should have known that, as
13 a result of these policies, Plaintiff and other non-party Aggrieved Employees were not actually
14 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
15 should have known that Defendants did not pay Plaintiff and other non-party Aggrieved
16 Employees meal period premiums when meal periods were late, interrupted, shortened, or
17 missed.

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

1 and failed to pay the full meal period premiums due.

2 89. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
3 Employees compliant meal periods and failed to pay the full meal period premiums due.
4 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
5 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
6 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
7 2699(a), (f), and (g).

8 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

9 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

10 90. At all relevant times herein set forth, the applicable IWC Wage Order and
11 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
12 non-party Aggrieved Employees' employment by Defendants.

13 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very
14 employer shall authorize and permit all employees to take rest periods, which insofar as
15 practicable shall be in the middle of each work period" and that the "rest period time shall be
16 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
17 hours or major fraction thereof" unless the total daily work time is less than three and one-half
18 (3½) hours.

19 92. At all relevant times, California Labor Code section 226.7 provides that no
20 employer shall require an employee to work during any rest period mandated by an applicable
21 order of the California IWC. To comply with its obligation to authorize and permit rest
22 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
23 employer must "relinquish any control over how employees spend their break time, and
24 relieve their employees of all duties—including the obligation that an employee remain on
25 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
26 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
27 California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees
28 are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of

1 pay for each work day that a required rest period was not authorized and permitted.

2 93. During the relevant time period, Defendants regularly failed to authorize and
3 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
4 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
5 Defendants' company-wide practices, including understaffing and assigning heavy workloads,
6 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty
7 to take rest periods. Additionally, Defendants failed to adhere to a schedule of rest periods,
8 which, coupled with Defendants' failure to provide adequate rest period coverage, further led
9 to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to
10 take compliant rest periods.

11 94. Additionally, on information and belief, during the relevant time period,
12 Defendants maintained and implemented a company-wide on-premises rest period policy,
13 which mandated that Plaintiff and other non-party Aggrieved Employees remain on the work
14 premises during their rest periods. Because Plaintiff and other non-party Aggrieved
15 Employees were restricted from leaving the premises during rest periods, they were denied the
16 ability to use their rest periods freely for their own purposes, such as running personal errands.
17 Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
18 Employees during rest periods.

19 95. As a result of Defendants' practices and policies, Plaintiff and other non-party
20 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess
21 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
22 entitled. For example, Plaintiff missed rest periods at least four (4) times per week because of
23 the heavy workload and lack of coverage. In addition, his rest periods would be interrupted
24 every shift due to production line issues, materials running out, water leaking onto the floor,
25 or the company being behind schedule. Further, Plaintiff did not receive a third rest period
26 when he worked shifts in excess of 10 hours.

27 96. Defendants have also engaged in a company-wide policy and/ or practice of not
28 paying all rest period premiums owed when compliant rest periods are not authorized and

1 permitted. Alternatively, to the extent that Defendants did pay other non-party Aggrieved
2 Employees one (1) additional hour of premium pay for missed rest periods, Defendants did
3 not pay other non-party Aggrieved Employees at the correct rate of pay for premiums because
4 Defendants failed to include all forms of compensation, such as incentive pay,
5 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a
6 result, Defendants denied Plaintiff and other non-party Aggrieved Employees rest periods and
7 failed to pay them rest period premiums due, in violation of Labor Code section 226.7, 516,
8 and the applicable IWC Wage Order.

9 97. Defendants' conduct violates the applicable IWC Wage Order and California
10 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
12 558 and/or 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
14 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

20 99. At all relevant times, Defendants have knowingly and intentionally provided
21 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
22 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
23 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total
24 hours worked; net wages earned; and all applicable hourly rates in effect during the pay
25 period, including overtime rates of pay, and the corresponding number of hours worked at
26 each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
27 and 226(a)(9).

28 100. Because Defendants did not record the time Plaintiff and other non-party

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

11 101. Second, because Defendants did not calculate other non-party Aggrieved
12 Employees' regular rate of pay correctly for purposes of paying overtime, Defendants did not
13 list the correct amount of gross wages earned by other non-party Aggrieved Employees in
14 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
15 amount of net wages earned by other non-party Aggrieved Employees in violation of section
16 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during
17 the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

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

26 103. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
28 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he

1 employment of any employees for longer hours than those fixed by the order or under
2 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
3 Wage Order, employers are required to keep accurate time records showing when the
4 employee begins and ends each work period and meal period. During the relevant time
5 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
6 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
7 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
8 and/or policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records
9 by recording that compliant meal periods were taken regardless of if or when meal periods
10 were actually taken, and thereby failed to keep accurate records of meal start and end times for
11 Plaintiff and other non-party Aggrieved Employees. Furthermore, in light of Defendants’
12 failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute
13 meal periods to which they were entitled, Defendants kept no records of meal start and end
14 times for second meal periods.

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

26 105. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
27 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
28 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

3 106. This cause of action is dependent upon, and wholly derivative of, the overtime
4 wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to
5 Plaintiff and those other non-party Aggrieved Employees no longer employed by Defendants
6 upon their termination.

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

14 108. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
15 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
16 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
17 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
18 leaving Defendants' employ.

19 109. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
20 who are no longer employed by Defendants their wages earned and unpaid at the time of
21 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
22 California Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved
23 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
24 256 and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

26 **VIOLATION OF LABOR CODE SECTION 204**

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

1 Plaintiff and those other non-party Aggrieved Employees.

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

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

12 113. At all times relevant herein, Labor Code section 204 provides that all wages
13 earned for labor in excess of the normal work period shall be paid no later than the payday for
14 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
15 204 provides that the requirements of this section are deemed satisfied by the payment of
16 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
17 seven (7) calendar days following the close of the payroll period.

18 114. During the relevant time period, Defendants willfully failed to pay Plaintiff and
19 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
20 wages, minimum wages, and/or meal and rest period premiums, within the time periods
21 specified by California Labor Code section 204.

22 115. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
23 all wages due violates California Labor Code section 204. Plaintiff and other non-party
24 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
25 sections 210 and/or 2699(a), (f), and (g).

26 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATIONS**

27 **VIOLATION OF LABOR CODE SECTION 222.5**

28 116. At all relevant times herein, California Labor Code section 222.5 requires

1 employers to pay for the costs an employee incurs for obtaining any required medical or
2 physical examination.

3 117. During the relevant time period, Defendants implemented, on a company-wide
4 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
5 mandatory drug testing and/or physical examinations, but required them to do so at their own
6 expense. As stated, Defendants had a company-wide policy requiring that other non-party
7 Aggrieved Employees travel to a specified medical facility on their own time and use their
8 own means of transportation to undergo drug testing and/or physical examinations. At all
9 times, Defendants were in control of scheduling the date and time for the testing and/or
10 examinations, selecting the provider/facility where the testing and/or examinations were to
11 take place, and determining the scope of the testing and/or examinations.

12 118. However, Defendants did not compensate other non-party Aggrieved
13 Employees for the time they spent traveling to and from the medical facilities; for the time
14 they spent undergoing the drug testing and/or physical examinations; or reimburse them for
15 the travel expenses they incurred getting to and from the medical facilities. Defendants'
16 policy and/or practice of not paying for all costs other non-party Aggrieved Employees
17 incurred undertaking mandatory drug testing and/or physical examinations is in violation of
18 California Labor Code section 222.5.

19 119. Other non-party Aggrieved Employees are therefore entitled to recover civil
20 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

22 **VIOLATION OF LABOR CODE SECTIONS 551, 552, and 558**

23 120. At all relevant times herein, California Labor Code section 551 provides that
24 every person employed in any occupation of labor is entitled to one day's rest in seven.
25 Additionally, California Labor Code section 552 prohibits employers from requiring
26 employees to work more than six consecutive days without a day of rest.

27 121. At all relevant times herein set forth, California Labor Code section 556
28 exempts an employer from the day-of-rest requirement when the total hours worked by an

1 employee do not exceed 30 hours in any week or six hours in any one day thereof.

2 122. Labor Code section 558(a) provides “[a]ny employer or other person acting on
3 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
4 provision regulating hours and days of work in any order of the Industrial Welfare
5 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
6 dollars (\$50) for each underpaid employee for each pay period for which the employee was
7 underpaid in addition to an amount sufficient to recover underpaid wages. . . . (2) For each
8 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
9 period for which the employee was underpaid . . . in addition to an amount sufficient to
10 recover underpaid wages.” Labor Code section 558(c) provides “[t]he civil penalties provided
11 for in this section are in addition to any other civil or criminal penalty provided by law.”

12 123. During the relevant time period, on information and belief, Defendants
13 scheduled other non-party Aggrieved Employees to work eight (8) or more hours per day and
14 more than six (6) consecutive days in a workweek. Because other non-party Aggrieved
15 Employees worked over 30 hours per week and over six (6) hours per day in a workweek, they
16 were not exempt from the day-of-rest requirement. To the extent that other non-party
17 Aggrieved Employees may have signed purported waivers of their right to a day’s rest in
18 seven, such waivers are invalid.

19 124. Thus, during the relevant time period, and in violation of California Labor
20 Code sections 551 and 552, Defendants willfully caused other non-party Aggrieved
21 Employees to work more than six days in seven. Other non-party Aggrieved Employees are
22 therefore entitled to recover civil penalties pursuant to Labor Code section 558.

23 **FAILURE TO MAINTAIN WORK TEMPERATURE PROVIDING**
24 **REASONABLE COMFORT**
25 **VIOLATION OF LABOR CODE SECTION 1198**

26 125. At all relevant times, California Labor Code section 1198 dictates that no
27 employer may employ an employee under conditions of labor that are prohibited by the
28 applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . .

1 the standard conditions of labor fixed by the commission shall be the . . . standard conditions
2 of labor for employees. The employment of any employee . . . under conditions of labor
3 prohibited by the order is unlawful.”

4 126. California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide
5 that “[t]he temperature maintained in each work area shall provide reasonable comfort
6 consistent with industrywide standards for the nature of the process and the work performed. .
7 . . If excessive heat or humidity is created by the work process, the employer shall take all
8 feasible means to reduce such excessive heat or humidity to a degree providing reasonable
9 comfort.” California law requires an employer to endeavor to provide a safe and healthy
10 workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section 6720
11 required the California Division of Occupational Safety and Health (“OSHA”) to propose an
12 indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of April 22, 2019,
13 applies its proposed regulations to “all indoor work areas where the temperature equals or
14 exceeds 82 degrees Fahrenheit when employees are present.”

15 127. Upon information and belief, Defendants violated California Labor Code
16 section 1198 and California Code of Regulations, Title 8, section 11010(15), because
17 Defendants failed to maintain a temperature in work areas that provided reasonable comfort
18 consistent with industry-wide standards for the nature of the process and the work performed
19 and failed to take all feasible means to reduce excessive heat or humidity to a degree
20 providing reasonable comfort.

21 128. During the relevant time period, Plaintiff and other non-party Aggrieved
22 Employees were subjected to excessive heat and/or humidity resulting in temperatures
23 equaling or exceeding 82 degrees Fahrenheit. Defendants failed to provide Plaintiff and other
24 non-party Aggrieved Employees with reasonable comfort by maintaining the indoor
25 temperature within the range of industry standards by providing adequate air conditioning, in
26 violation of California Labor Code section 1198 and IWC Wage Order No. 1-2001, Section
27 15. For example, Plaintiff and other non-party Aggrieved Employees who were present on
28 Defendants’ worksites were not provided air conditioning and would be required to work

1 indoors at 110 degrees Fahrenheit or more, due to machines that produced materials at 400
2 degrees Fahrenheit. Plaintiff nearly experienced a heat stroke multiple times from these
3 improper work conditions.

4 129. Accordingly, Defendants failed to maintain, in their work areas, a temperature
5 providing reasonable comfort for their employees, including Plaintiff and other non-party
6 Aggrieved Employees, in violation of California Labor Code section 1198. Plaintiff and other
7 non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code
8 sections 2699(a), (f), and (g).

9 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

10 **VIOLATION OF LABOR CODE SECTION 2802**

11 130. At all times herein set forth, California Labor Code section 2802 provides that
12 an employer must reimburse employees for all necessary expenditures and losses incurred by
13 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
14 to prevent employers from passing off their cost of doing business and operating expenses on
15 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
16 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen
17 tools or equipment are required by the employer or are necessary to the performance of a job,
18 such tools and equipment shall be provided and maintained by the employer, except that an
19 employee whose wages are at least two (2) times the minimum wage provided herein may be
20 required to provide and maintain hand tools and equipment customarily required by the trade
21 or craft."

22 131. First, Defendants, on a company-wide basis, required that Plaintiff and other
23 non-party Aggrieved Employees use their own personal cellular phones and/or cellular data to
24 carry out their job duties, but failed to reimburse them for the costs of their work-related
25 cellular phone expenses. For example, Plaintiff and other non-party Aggrieved Employees
26 were required to use their personal cellular phones to complete their work-related tasks, such
27 as providing status reports about the production line and taking pictures of broken machinery
28 and work hazards in order to bring issues to the safety committee's attention. Although

1 Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their
2 personal cellular phones to carry out their work-related responsibilities, Defendants failed to
3 fully reimburse them for this cost.

4 132. Second, Defendants required Plaintiff and other non-party Aggrieved
5 Employees to wear uniform shirts bearing the company logo, on a daily basis, but failed to
6 provide Plaintiff and other non-party Aggrieved Employees with uniform cleaning services or
7 reimburse them for cleaning expenses incurred. However, Defendants did not provide their
8 employees with sufficient uniforms to wear for their shifts throughout the week. For example,
9 due to the nature of their work, Plaintiff's and other non-party Aggrieved Employees' uniform
10 shirts would become dirty with grime and/or hazardous chemicals. As a result, Plaintiff and
11 other non-party Aggrieved Employees were forced to wash their uniform items separately
12 from any other items and/or more frequently than they would otherwise, thus incurring
13 additional utility and laundry expenses.

14 133. Third, as stated, Defendants had a company-wide policy of requiring other non-
15 party Aggrieved Employees to travel to medical facilities on their own time and using their
16 personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical
17 examinations, but did not reimburse them for their travel expenses, including mileage. At all
18 times, Defendants were in control of scheduling the date and time for the testing and/or
19 physical examinations, selecting the provider or facility where the testing and/or physical
20 examinations were to take place, and determining the scope of the testing and/or physical
21 examinations. Defendants gave other non-party Aggrieved Employees strict instructions to
22 obtain drug testing and/or physical examinations, and other non-party Aggrieved Employees
23 underwent the examinations and/or testing for the sole benefit of Defendants. Although
24 Defendants required other non-party Aggrieved Employees to use their own vehicles or obtain
25 alternate transportation to undergo mandatory drug testing and/or physical examinations,
26 Defendants never reimbursed them for their travel expenses.

27 134. Defendants could have provided Plaintiff and other non-party Aggrieved
28 Employees with the actual tools for use on the job, such as company phones and vehicles, and

1 access to laundering services. Or, Defendants could have reimbursed employees for their
2 cellular phone usage, mileage, travel, and laundering expenses. Instead, Defendants passed
3 these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all
4 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

5 135. Defendants' company-wide policy and/or practice of passing on their operating
6 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
7 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
8 other non-party Aggrieved Employees for necessary business-related expenses and costs.

9 136. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
10 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

12 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

13 137. At all relevant times set forth, California Labor Code section 6401 provides that
14 employers must furnish and use safety devices and safeguards, and adopt and use practices,
15 means, and methods, operations, and processes which are reasonably adequate to render the
16 employment and place of employment safe and healthy. California Labor Code Section 6401
17 further provides that an employer must do everything reasonably necessary to protect the life,
18 safety and health of its employees. California Labor Code section 6403(a) requires that
19 employers provide and use safety devices and safeguards reasonably adequate to render the
20 employment and place of employment safe.

21 138. Defendants, on a company-wide basis, failed to provide Plaintiff and other non-
22 party other non-party Aggrieved Employees with personal protective equipment, such as
23 respiratory devices, to keep them safe in the workplace. Despite the fact that Defendants
24 required employees to work in areas with hazardous chemicals or fumes, Defendants failed to
25 provide such reasonably necessary equipment to Plaintiff and other non-party Aggrieved
26 Employees to keep them safe. For example, on at least one occasion, Plaintiff choked after
27 inhaling chemical smoke while working with dangerous chemicals because Defendants had
28 not provided him with a protective mask or respiratory device to wear.

139. Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with safety devices and safeguards for the workplace violates California Labor Code sections 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 222.5 (by failing to pay for costs of mandatory physical exams and/or drug testing); 551 and 552 (by failing to provide one day's rest in seven); 1198 (by failing to maintain work temperature providing reasonable comfort); 2802 (by failing to reimburse business expenses); and 6401 and 6403 (by failing to provide safety devices and safeguards);

140. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, and 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197,

1 1198, 2802, 6401, and 6403.

2 141. For attorneys' fees and costs pursuant to California Labor Code section
3 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
4 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552,
5 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

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

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

9
10 Dated: June 23, 2021

Respectfully submitted,

11 Capstone Law APC

12
13 By: 

14 Mark A. Ozzello
15 Brandon K. Brouillette
16 Joseph Hakakian

17 Attorneys for Plaintiff Pedro Ramos
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EXHIBIT 1



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April 16, 2021

VIA ONLINE SUBMISSION

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

Subject: *Pedro Ramos v. Georg Fischer Harvel LLC, et al.*

Dear PAGA Administrator:

This office represents Pedro Ramos in connection with his claims under the California Labor Code. Mr. Ramos was an employee of GEORG FISCHER HARVEL LLC, GEORG FISCHER INC., GEORG FISCHER LLC, GEORG FISCHER CENTRAL PLASTICS LLC, GEORG FISCHER SIGNET LLC, and/or GF MACHINING SOLUTIONS LLC. For the purpose of this letter, Mr. Ramos collectively refers to these entities as "GF."

The employers may be contacted directly at the addresses below:

GEORG FISCHER HARVEL LLC
300 KUEBLER ROAD
EASTON PA 18040

GEORG FISCHER INC.
3401 AEROJET AVENUE
EL MONTE CA 91731

GEORG FISCHER LLC
9271 JERONIMO ROAD
IRVINE CA 92618

GEORG FISCHER CENTRAL
PLASTICS LLC
39605 INDEPENDENCE ST
SHAWNEE OK 74804

GEORG FISCHER SIGNET LLC
3401 AEROJET AVENUE
EL MONTE CA 91731

GF MACHINING SOLUTIONS LLC
560 BOND ST
LINCOLNSHIRE IL 60069-4224

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

GF employed Mr. Ramos as an hourly paid, non-exempt employee from approximately November 1998 to April 2020. Mr. Ramos worked for GF as an Extruder Operator at its location in Bakersfield, California. During his employment, Mr. Ramos typically worked eight (8) hours or more per day and five (5) or more days per week. At the time Mr. Ramos's employment with GF ended, he earned approximately \$22.73 per hour. His job duties included, without limitation, operating machinery, monitoring the production line, completing paperwork outlining orders, packaging PVC pipes, and maintaining the warehouse premises.

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

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

GEORG FISCHER HARVEL LLC, GEORG FISCHER CENTRAL PLASTICS LLC, and GF MACHINING SOLUTIONS LLC are a Pennsylvania limited liability company, an Oklahoma limited liability company, and a New York limited liability company, respectively. GEORG FISCHER LLC and GEORG FISCHER SIGNET LLC are California limited liability companies, while GEORG FISCHER INC. is an unknown business entity. Together, they are a leading global supplier of piping systems, lightweight casting components, and high-precision manufacturing technologies. GF operates several manufacturing plants in California. Upon information and belief, GF maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Bakersfield, El Monte, or Irvine, California, for all non-exempt, hourly paid employees working for GF in California, including Mr. Ramos and other aggrieved employees. At all relevant times, GF issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Ramos and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a

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

day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, during the relevant period, GF had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest tenth (0.1) of an hour. GF's rounding policy resulted in the failure to compensate Mr. Ramos and other aggrieved employees fully for all hours worked, causing Mr. Ramos and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. GF's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Ramos and other aggrieved employees. To the extent GF's rounding policy has taken away time worked that was eligible for overtime, Mr. Ramos and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant period, GF had a policy and/or practice of discouraging and impeding Mr. Ramos and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with GF's practice of understaffing and assignment of heavy workloads (*see infra*), led Mr. Ramos and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, 1-2 times per week, Mr. Ramos typically spent 5-10 minutes assisting other employees with cutting and processing piping, before being permitted to clock in for his scheduled shift. In addition, once or twice per week, Mr. Ramos was required to clock out and continue working for 60-90 minutes, performing tasks such as cleaning the warehouse and boxing up defective pipes for recycling.

Third, GF implemented, on a company-wide basis, an employer-imposed requirement that Mr. Ramos and other aggrieved employees undergo mandatory health screenings and temperature checks before their scheduled shifts. Mr. Ramos and other aggrieved employees waited in line, for several minutes per instance, to undergo the mandatory health screenings before GF permitted them to clock in for their shifts, but GF did not compensate them for the time they remained under GF's control. Further, GF only provided Mr. Ramos and other aggrieved employees with two (2) access points to its timekeeping system, but the machines frequently malfunctioned, thus exacerbating the amount of time Mr. Ramos and other aggrieved employees waited in line, off-the-clock, and under GF's control, time for which they were not paid.

Fourth, GF had, and continues to have, a company-wide policy and/or practice of requiring Mr. Ramos and other aggrieved employees to perform tasks off-the-clock, such as responding to phone communications from supervisors and other employees regarding work related matters. For

example, Mr. Ramos and other aggrieved employees were required to use their personal cellular phones to complete their work-related duties, such as communicating with supervisors and other employees regarding status reports on the production line. GF failed to track this time Mr. Ramos and other aggrieved employees spent working off-the-clock, and thus, Mr. Ramos and other aggrieved employees received no compensation for this time.

Fifth, during the relevant period, GF had, and continues to have, a company-wide policy and/or practice of understaffing its worksites while assigning heavy workloads, including pressure to meet deadlines and production requirements. GF also had a practice of failing to schedule meal periods, which further caused Mr. Ramos and other aggrieved employees to not be relieved of their duties for compliant meal periods. GF's policies and/or practices resulted in a failure to provide Mr. Ramos and other aggrieved employees with adequate meal period coverage, and thus, Mr. Ramos and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, for approximately 10 minutes per shift, Mr. Ramos's meal period would be interrupted to resolve issues with power outages, production issues, or equipment malfunctions in order to ensure that the production lines were operating at all times. Thus, Mr. Ramos and other aggrieved employees missed and/or had meal periods interrupted or cut short in order to complete their assigned workloads and meet production requirements. GF did not pay Mr. Ramos and other aggrieved employees for the time they continued to perform tasks during meal periods.

Additionally, because GF frowned upon employees accruing meal period penalties, GF's management pressured Mr. Ramos and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period, in order to strictly limit meal penalties that GF would otherwise owe. For example, Mr. Ramos was pressured by GF's management to clock out and record compliant meal periods on shifts when he had not, in fact, received a compliant meal period. Thus, GF did not all record hours worked during meal periods and Mr. Ramos and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

Accordingly, Mr. Ramos and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198.

Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As stated above, GF had a company-wide policy and/or practice of rounding Mr. Ramos's and other aggrieved employees' hourly clock-in and clock-out times in its timekeeping system to the nearest tenth of an hour, resulting in the failure to compensate them for all hours worked. Also, due to GF's restrictions on overtime accrual, GF systematically failed to pay Mr. Ramos and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. As stated, because GF discouraged and impeded Mr. Ramos and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Ramos and other aggrieved employees were required to work off-the-clock before and/or after their scheduled shift start and end times, completing assigned job duties, submitting themselves to off-the-clock health screenings, waiting to clock-in at the timekeeping machines, and communicating with supervisors on their personal cellular phones regarding work-related matters.

Additionally, as set forth above, due to GF's uniform practice of understaffing, assignment of heavy workloads, pressure to meet deadlines and production requirements, failure to schedule meal periods, and the resulting lack of coverage, Mr. Ramos and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, in order to prevent employees from accruing meal period penalties, GF's management pressured Mr. Ramos and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Thus, GF systematically failed to pay Mr. Ramos and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Thus, GF did not pay at least minimum wages for all hours worked by Mr. Ramos and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, GF did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, GF regularly failed to pay at least minimum wages to Mr. Ramos and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

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

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, GF had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressure to meet deadlines and production requirements. Further, GF had a company-wide practice of failing to schedule meal periods for Mr. Ramos and other aggrieved employees, pursuant to a written policy which states "these [meal] breaks are not scheduled, but will be taken as needed[.]" resulting in Mr. Ramos and other aggrieved employees having their meal periods cut short to return to work or waiting extended periods of time before taking meal periods, due to the heavy workload and lack of coverage. GF's practices and policies prevented Mr. Ramos and other aggrieved employees from taking all compliant meal periods to which they were entitled.

As a result, Mr. Ramos and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, Mr. Ramos took his meal periods late, after the end of his sixth or seventh hour of work, in order to finish his assigned duties. In addition, Mr. Ramos's meal periods were interrupted or cut short by 10 minutes per instance to resolve issues with power outages, production issues, or equipment malfunctions in order to ensure that the production lines were operating at all times.

Furthermore, as stated, on information and belief, because GF frowned upon employees accruing meal period penalties, GF's management pressured Mr. Ramos and other aggrieved employees to clock out for meal periods and/or adjusted Mr. Ramos's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by GF. For example, Mr. Ramos was required to clock out for his meal period before the fifth hour of his shift to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods. Moreover, GF's company-wide policy and/or practice of improperly rounding employees' meal period clock-in and clock-out time durations in its timekeeping system to the nearest tenth (.1) of an hour resulted in the failure to accurately account for meal periods which were late and/or shortened, further causing Mr. Ramos and other aggrieved employees to not be paid premiums for non-compliant meal periods.

Moreover, GF did not provide Mr. Ramos and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Ramos worked shifts in excess of ten (10) hours or more hours per day but was not provided an uninterrupted second 30-minute meal period. Mr. Ramos and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

GF knew or should have known that as a result of its non-compliant policies and practices, that Mr. Ramos and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. GF further knew or should have known that it did not pay Mr. Ramos and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

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

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

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

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which

insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, GF regularly failed to authorize and permit Mr. Ramos and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, GF’s company-wide practices, including understaffing and the assignment of heavy workloads, prevented Mr. Ramos and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, GF also failed to adhere to a schedule of rest periods, which, coupled with GF’s failure to provide adequate rest period coverage, further led to Mr. Ramos and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, GF maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Ramos and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Ramos and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, GF effectively maintained control over Mr. Ramos and other aggrieved employees during rest periods.

As a result, Mr. Ramos and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Ramos missed rest periods at least four (4) times per week because of the heavy workload and lack of coverage. In addition, his rest periods would be interrupted every shift due to production line issues, materials running out, water leaking onto the floor, or the company being behind schedule. Further, Mr. Ramos did not receive a third rest period when he worked shifts in excess of 10 hours.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. GF has not provided Mr. Ramos and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

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

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

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages

of all minors” and “[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), GF willfully failed to maintain accurate payroll records for Mr. Ramos and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Ramos’ and other aggrieved employees’ total hours worked.

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

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are

deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

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

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

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

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

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

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

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

During the relevant time period, GF implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, GF had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, GF was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. However, GF did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. GF's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, GF scheduled other aggrieved employees to work eight (8) or more hours per day and more than six (6) consecutive days in a workweek. Because other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, GF caused other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide that "[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. . . . If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort." California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section 6720 required the California Division of Occupational Safety and Health ("OSHA") to propose an indoor heat illness standard by January 1, 2019; OSHA's draft standard, as of April 22, 2019, applies its proposed regulations to "all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present."

Upon information and belief, GF violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15), because GF failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

During the relevant time period, Mr. Ramos and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit. GF failed to provide Mr. Ramos and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and IWC Wage Order 1-2001, Section 15. For example, Mr. Ramos and other aggrieved employees who were present on GF's worksites were not provided air conditioning and would be required to work indoors at 110 degrees Fahrenheit or more, due to machines that produced materials at 400 degrees Fahrenheit. Mr. Ramos nearly experienced a heat stroke multiple times from these improper work conditions. Accordingly, GF failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, including Mr. Ramos and other aggrieved employees, in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, GF had a company-wide policy of requiring Mr. Ramos and other aggrieved employees to utilize their own personal cellular phones and/or cellular data to carry out their job duties, but GF failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Ramos and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as providing status reports about the production line and taking pictures of broken machinery and work hazards in order to bring issues to the safety committee's attention. Although GF required Mr. Ramos and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, GF failed to reimburse them for this cost.

Additionally, during the relevant time period, GF, on a company-wide basis, required Mr. Ramos and other aggrieved employees to wear uniform shirts bearing the company logo, on a daily basis, but failed to provide Mr. Ramos and other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. However, GF did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, due to the nature of their work, Mr. Ramos's and other aggrieved employees' uniform shirts would become dirty with grime and/or hazardous chemicals. As a result, Mr. Ramos and other aggrieved employees were forced to wash their uniform items separately from any other items and/or more frequently than they would otherwise, thus incurring additional utility and laundry expenses.

Furthermore, as stated, GF had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or obtain alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, GF was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. GF gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of GF. Although GF required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, GF never reimbursed them for their travel expenses.

GF could have provided Mr. Ramos and other aggrieved employees with the actual tools required for use on the job, such as company phones and vehicles, and access to laundering services. Or, GF could have reimbursed employees for their cellular phone usage, mileage, travel, and laundering expenses. Instead, GF passed these operating costs off onto Mr. Ramos and other aggrieved employees. At all relevant times, Mr. Ramos did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

GF, on a company-wide basis, failed to provide Mr. Ramos and other aggrieved employees with personal protective equipment, such as respiratory devices, to keep them safe in the workplace. Despite the fact that GF required employees to work in areas with hazardous chemicals or fumes, GF failed to provide such reasonably necessary equipment to Mr. Ramos and other aggrieved employees to keep them safe. For example, on at least one occasion, Mr. Ramos choked after inhaling chemical smoke while working with dangerous chemicals because GF had not provided him a protective mask or respiratory device to wear.

GF's failure to provide Mr. Ramos and other aggrieved employees with safety devices and safeguards for the workplace violates California Labor Code sections 6401 and 6403. Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Mr. Ramos seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Ramos, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against GF for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

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

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

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

Best Regards,



Mao Shiokura

Copy: GEORG FISCHER HARVEL LLC (via U.S. Certified Mail); GEORG FISCHER INC. (via U.S. Certified Mail); GEORG FISCHER LLC (via U.S. Certified Mail); GEORG FISCHER CENTRAL PLASTICS LLC (via U.S. Certified Mail); GEORG FISCHER SIGNET LLC (via U.S. Certified Mail); GF MACHINING SOLUTIONS LLC (via U.S. Certified Mail)