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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 OSCAR MORALES, on behalf of himself
and others similarly situated,

12 Plaintiff,

13 vs.

14 FAIRWAY STAFFING SERVICES, INC. a
California corporation; NEPTUNE FOODS, a
15 business entity of unknown form; and DOES 1
through 50, inclusive

16 Defendants.

Case No. 21STCV11632

CLASS ACTION

Assigned for All Purposes To:
Hon. Kenneth R. Freeman
Dept.: 14

**SECOND AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor
Code § 226.7;
4. Rest-Break Liability Under Labor Code
§ 226.7;
5. Violation of Labor Code § 226(a);
6. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
7. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5
8. Penalties Pursuant to Labor Code § 203;
9. Violation of Business & Professions
Code § 17200 *et seq.*;
10. Penalties Pursuant to Labor Code §
2699

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles
12/07/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: C. Gomez Deputy

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BRENDA KARINA SANDOVAL, on behalf of herself and others similarly situated
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1 Plaintiff OSCAR MORALES and Plaintiff BRENDA KARINA SANDOVAL, (hereinafter
2 “Plaintiffs”) on behalf of themselves and all others similarly situated (collectively, “Employees”;
3 individually, “Employee”) complains of Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiffs bring this action on behalf of themselves and all similarly situated current
6 and former employees within the State of California who, at any time four (4) years prior to the
7 filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants
8 FAIRWAY STAFFING SERVICES, INC. a California corporation, NEPTUNE FOODS, a
9 business entity of unknown form, FISHERMAN’S PRIDE PROCESSORS, INC. a California
10 corporation, and DOES 1 through 50 (all defendants being collectively referred to herein as
11 “Defendants”). Plaintiffs allege that Defendants, and each of them, violated various provisions of
12 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
13 California Business & Professions Code, and seek redress.

14 2. Plaintiffs are residents of California and during the time period relevant to this
15 Complaint were employed by Defendants as non-exempt hourly employees within the State of
16 California at Defendants’ facilities and offices in San Pedro and Los Angeles, California. Plaintiffs
17 and the other Class members worked for Defendants in Los Angeles County and throughout
18 California, and consistently worked at Defendants’ behest without being paid all wages due. More
19 specifically, Plaintiffs and the other similarly situated Class members were employed by
20 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
21 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiffs
22 were employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
23 subjected to the same policies and practices, and (3) endured similar violations at the hands of
24 Defendants as the other Employee Class members who served in similar and related positions.

25 3. Defendants required Plaintiffs and the Employees in the Class to work off the clock
26 and to perform work and remain under Defendants’ control during their meal and rest breaks.
27 Defendants also failed to provide Plaintiffs and the Class with lawful meal periods and failed to
28 authorize and permit them to take all required rest breaks, as Employees were not provided with

1 the opportunity to take uninterrupted and duty-free rest breaks and meal breaks or Defendants
2 failed to timely provide them as required by the Labor Code and applicable IWC Wage Orders.
3 Plaintiffs and the Class members were also compelled to clock out for meal periods and return to
4 work off the clock or to otherwise work through meal periods and rest breaks while remaining
5 under Defendants' control due to the difficult work requirements and management demands
6 placed upon them. Defendants thus failed to pay Plaintiffs and the Class members for all hours
7 worked, and provided them with inaccurate wage statements that prevented Plaintiffs and the
8 Class from learning of these unlawful pay practices.

9 **THE PARTIES**

10 **A. The Plaintiffs**

11 4. Plaintiff OSCAR MORALES has resided in California and during the time period
12 relevant to this Complaint was employed by Defendant FAIRWAY STAFFING SERVICES, INC.
13 and Defendant NEPTUNE FOODS as a non-exempt hourly employee within the State of
14 California at Defendants' facilities and offices in San Pedro, California.

15 5. Plaintiff BRENDA KARINA SANDOVAL has resided in California and during
16 the time period relevant to this Complaint was employed by Defendant Fisherman's Pride
17 Processors, Inc. as a non-exempt hourly employee within the State of California at Defendants'
18 facilities and offices in Los Angeles, California.

19 **B. The Defendants**

20 6. Defendant FAIRWAY STAFFING SERVICES, INC. ("FSS") is a California
21 corporation with its principle executive offices in Cerritos, California, and has been listed as the
22 employer on the wage statements issued to Plaintiff OSCAR MORALES during the relevant time
23 period. FSS lists a California address in Cerritos, California with the California Secretary of State,
24 and employs Plaintiff OSCAR MORALES and the Class members in Los Angeles County,
25 including at Defendants' offices and facilities in San Pedro, California, and throughout California
26 and Defendants conduct business throughout California.

27 7. Defendant NEPTUNE FOODS, ("NF") is a business entity of unknown form with
28 its principle executive offices in San Pedro, California, and has been listed as the employer on the

1 wage statements issued to Plaintiff OSCAR MORALES during the relevant time period. NF does
2 not list a California address with the California Secretary of State, but upon information and
3 belief, employs Plaintiff OSCAR MORALES and the Class members in Los Angeles County,
4 including at Defendants' offices and facilities in San Pedro, California, and throughout California
5 and conducts business throughout California.

6 8. Defendant FISHERMAN'S PRIDE PROCESSORS, INC. a California corporation
7 ("FPP") is a California corporation with its principle executive offices in Los Angeles, California,
8 and has been listed as the employer on the wage statements issued to Plaintiff BRENDA
9 KARINA SANDOVAL during the relevant time period. FPP does not list a California address
10 with the California Secretary of State, but upon information and belief, employs Plaintiff
11 BRENDA KARINA SANDOVAL and the Class members in Los Angeles County, including at
12 Defendants' offices and facilities in Los Angeles, California, and throughout California and
13 conducts business throughout California.

14 9. The true names and capacities, whether individual, corporate, associate, or
15 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
16 unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names under Code of
17 Civil Procedure § 474. Plaintiffs are informed and believe and thereon alleges that Defendants
18 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
19 some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend
20 this Complaint to reflect the true names and capacities of the Defendants designated herein as
21 Does 1 through 50 when their identities become known.

22 10. Plaintiffs are informed and believe and thereon alleges that each Defendant acted in
23 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
24 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
25 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
26 all respects as the employers or joint employers of Employees. Defendants, and each of them,
27 exercised control over the wages, hours or working conditions of Employees, or suffered or
28 permitted Employees to work, or engaged, thereby creating a common law employment

1 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
2 employed Employees.

3 **JURISDICTION AND VENUE**

4 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
6 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
7 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
8 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
9 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
10 County and Defendants maintain and operate company offices and facilities in Los Angeles
11 County, and employ Plaintiffs and other Class members in Los Angeles County and throughout
12 California.

13 **FACTUAL BACKGROUND**

14 12. The Employees who comprise the Class, including Plaintiffs, are nonexempt
15 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who
16 work in non-exempt positions at the direction of Defendants in the State of California. Plaintiffs
17 and the Class members were either not paid by Defendants for all hours worked or were not paid
18 at the appropriate overtime rates. Specifically, Defendants required Employees to work pre-shift,
19 in excess of their scheduled shifts for which they were not paid wages as Employees were
20 required to spend working hours under the control of Defendants because prior to clocking in
21 they would have to take time putting on their uniforms which they kept in Defendants' locker
22 room area. Employees were required to change into their rain boots and lab coats prior to
23 clocking into work each workday. Further, Employees were required to wait in line in order to
24 clock into work, and when returning from meal periods. Further, Employees were subjected to
25 COVID temperature screening prior to clocking into work.

26 13. Moreover, Plaintiffs contend that Defendants failed to pay Plaintiffs and the Class
27 members all wages due and owing, by making unlawful deductions from their pay, failed to
28 provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of

1 various provisions of the California Labor Code and applicable Wage Order provisions.

2 14. During the course of Plaintiffs and the Class members' employment with
3 Defendants, they were not paid all wages they were owed, including for all work performed and
4 for all overtime hours worked, and they were forced to work during their meal and rest breaks to
5 keep labor budgets low.

6 15. As a matter of uniform and unlawful Company policy, Plaintiffs and the Class
7 members were required to work during their meal periods and rest breaks, and they were again
8 not compensated for this off the clock work, in violation of the California Labor Code. Plaintiffs
9 and the Class members were also not paid regular wages and overtime for the time they were
10 required to comply with other work demands and requirements imposed upon them, which they
11 often had to complete while working through their meal and rest breaks and without
12 compensation. As a result Plaintiffs and the Class members worked shifts over eight (8) hours in
13 a day and over forty (40) hours in a work week, but they were not paid at the appropriate
14 overtime rate for all such hours, including by being required to perform work duties and tasks
15 without pay and while off-the-clock. As a result, Plaintiffs and the Class members worked
16 substantial overtime hours during their employment with Defendants for which they were not
17 compensated, in violation of the California Labor Code and applicable IWC Wage Orders.

18 16. As a result of the above, the failure to calculate and pay wages at the correct rates,
19 the daily work demands and pressures to work through breaks, and the other wage violations they
20 endured at Defendants' hands, Plaintiffs and the Class members were not properly paid for all
21 wages earned and for all wages owed to them by Defendants, including when working more than
22 eight (8) hours in any given day and/or more than forty (40) hours in any given week. As a result
23 of Defendants' unlawful policies and practices, Plaintiffs and Class members incurred overtime
24 hours worked for which they were not adequately and completely compensated, in addition to the
25 hours they were required to work off the clock. To the extent applicable, Defendants also failed to
26 pay Plaintiffs and the Class members at an overtime rate of 1.5 times the regular rate for the first
27 eight hours of the seventh consecutive work day in a week and overtime payments at the rate of 2
28 times the regular rate for hours worked over eight (8) on the seventh consecutive work day, as

1 required under the Labor Code, applicable IWC Wage Orders.

2 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay
4 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
5 by California Law.

6 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
7 continuing to the present, Defendants had a consistent policy or practice of failing to pay
8 Employees overtime compensation at premium overtime rates for all hours worked in excess of
9 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
10 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
11 sections of IWC Wage Orders.

12 19. Additionally, from at least four (4) years prior to the filing of this lawsuit and
13 continuing to the present, Defendants have regularly required Employees to work shifts in excess
14 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
15 (30) minutes, and shifts in excess of ten (10) hours without providing them with second meal
16 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
17 hour of wages at each Employee’s effective hourly rate of pay, for each meal period that
18 Defendants failed to provide or deficiently provided.

19 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
20 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
21 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
22 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
23 provided or were deficiently provided.

24 21. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
25 continuing to the present, Defendants have consistently failed to provide Employees with timely,
26 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

27 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
28 continuing to the present, Defendants have consistently failed to keep accurate time and wage

records as required by California wage-and-hour laws.

23. Additionally from at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, but not limited to the costs of the cost of rubber boots, safety masks, and laundering of lab coats which were necessary to perform their duties under Defendants' employ which was used throughout the course of Employees' duties under Defendants' employ in violation of Labor Code § 2802.

24. From at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

25. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203,204, 210, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802 and applicable provisions of the IWC Wage Orders.

26. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

27. Plaintiffs bring this class action on behalf of themselves an all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a class defined as follows: "All individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit, as non-exempt, hourly employees within the State of California.

28. Further, Plaintiffs seek to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not

1 compensated for all hours worked for Defendants at the required rates of pay, including for all
2 hours worked in excess of eight in a day and/or forty in a week.

3 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
4 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty
5 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

6 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
7 Defendants' policy and/or practice of failing to authorize and permit Employees to take
8 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
9 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

10 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
11 applicable limitations period, were not provided with accurate itemized wage statements.

12 f. Subclass 6. Failure to Reimburse for Necessary Business Expenditures. All Class
13 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in
14 the performance of Employees job duties for Defendants which were necessary to perform their
15 duties under Defendants' employ.

16 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
17 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
18 by California wage-and-hour laws.

19 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
20 applicable limitations period, either voluntarily or involuntarily separated from their employment
21 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
22 termination.

23 i. Subclass 9. UCL Subclass. All Class members who are owed restitution as a
24 result of Defendants' business acts and practices, to the extent such acts and practices are
25 found to be unlawful, deceptive, and/or unfair.

26 29. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or
27 modify the class description with greater particularity or further division into subclasses or
28 limitation to particular issues.

1 30. This action has been brought and may properly be maintained as a class action
2 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
3 of interest in litigation and proposed class is easily ascertainable.

4 **A. Numerosity**

5 31. The potential members of the class as defined are so numerous that joinder of all
6 the member of the class is impracticable. While the precise number of class member has not been
7 determined at this time, Plaintiffs are informed and believes that, during the time period relevant
8 to this lawsuit, Defendants employed more than 100 individuals within the State of California.

9 32. Accounting for employee turnover during the relevant time period increases this
10 number substantially. Plaintiffs allege that Defendants' employment records will provide
11 information as to the number and location of all class members.

12 **B. Commonality**

13 33. There are questions of law and fact common to the class that predominate over any
14 questions affecting only individual class members. These common questions of law and fact
15 include:

- 16 a. Whether Defendants failed to pay Employees minimum wages;
- 17 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 18 c. Whether Defendants failed to pay Employees overtime as required under Labor
19 Code § 510;
- 20 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
21 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
22 premium pay in lieu thereof;
- 23 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
24 Orders, by failing to provide Employees with requisite rest breaks or premium pay
25 in lieu thereof;
- 26 f. Whether Defendants violated Labor Code § 226(a);
- 27 g. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 28 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay

wages and compensation due and owing at the time of termination of employment;

i. Whether Defendants failed to reimburse Employees for necessary business expenses;

j. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;

k. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*; and

l. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

34. The claims of the named Plaintiffs are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendant's common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

35. Plaintiffs will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

36. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

37. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties in managing this case that should preclude class action.

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FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

38. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

39. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Specifically, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied. (see *infra*). Defendants also required Employees to work pre-shift, in excess of their scheduled shifts for which they were not paid wages as Employees were required to spend working hours under the control of Defendants because prior to clocking in they would have to take time putting on their uniforms which they kept in Defendants' locker room area. Employees were required to change into their rain boots and lab coats prior to clocking into work each workday. Further, Employees were required to wait in line in order to clock into work, and when returning from meal periods. Further, Employees were subjected to COVID temperature screening prior to clocking into work. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

40. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore entitled to double the minimum wage during the relevant period.

41. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California Labor Code § 1194(a) which states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest

thereon, reasonable attorney's fees and costs of suit.

42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission.

43. California Labor Code § 1194.2 also provides for the following remedies:

In any action under Section 1194 . . . to recover wages because of the payment of a wage less than the minimum wages fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

44. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

45. Wherefore, Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

46. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

47. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek.

48. Defendants had a consistent policy of not paying Employees wages for all hours worked including time Employees were consistently required to work "pre-shift" hours, in excess

1 of their eight-hour shift in a given work day because prior to clocking in they would have to take
2 time putting on their uniforms which they kept in Defendants' locker room area. Employees were
3 often not properly compensated, nor were they paid overtime rates for all hours worked in excess
4 of eight hours in a given day, and/or forty hours in a given week.

5 49. Defendants' failure to pay compensation in a timely fashion also constituted a
6 violation of California Labor Code § 204, which requires that all wages shall be paid
7 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
8 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
9 and overtime compensation earned by Employees. Each such failure to make a timely payment of
10 compensation to Employees constitutes a separate violation of California Labor Code § 204.

11 50. Employees have been damaged by these violations of California Labor Code §§
12 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

13 51. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
14 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
15 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
16 reasonable attorneys' fees and costs.

17 **THIRD CAUSE OF ACTION**

18 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

19 **(Against All Defendants)**

20 52. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
21 full herein.

22 53. Employees regularly worked shifts greater than five (5) hours and greater than ten
23 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
24 more than five (5) hours without providing him or her with a meal period of not less than thirty
25 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
26 meal period of not less than thirty (30) minutes.

27 54. Defendants failed to provide Employees with meal periods as required under the
28 Labor Code. Employees were consistently required to work through their meal periods which they

1 were consistently denied. Employees were also required to take meal periods after working well
2 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
3 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
4 period as required by law.

5 55. Moreover, Defendants failed to compensate Employees for each meal period not
6 provided or inadequately provided, as required under Labor Code § 226.7.

7 56. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
8 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
9 period not provided or deficiently provided, a sum to be proven at trial.

10 **FOURTH CAUSE OF ACTION**

11 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

12 **(Against All Defendants)**

13 57. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
14 full herein.

15 58. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
16 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
17 not less than ten (10) minutes for each consecutive four (4) hour shift.

18 59. Defendants failed to provide Employees with timely rest breaks of not less than ten
19 (10) minutes for each consecutive four (4) hour shift.

20 60. Moreover, Defendants did not compensate Employees with an additional hour of
21 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
22 with adequate rest breaks, as required under Labor Code § 226.7.

23 61. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
24 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
25 worked without the required rest breaks, a sum to be proven at trial.

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

62. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

63. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

64. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal and rest periods, and failed to account for actual hours worked, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove.

65. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

66. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

3 **IN VIOLATION OF LABOR CODE § 2802**

4 **(Against All Defendants)**

5 67. Plaintiff re-allege and incorporate all preceding paragraphs, as though set forth in
6 full herein.

7 68. Under Labor Code § 2802(a) an employer must indemnify its employees for all
8 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
9 of his or her duties, or of his or her obedience to the directions of the employer.

10 69. Employees incurred necessary expenditures in the performance of their job duties
11 for Defendants, namely the cost of rubber boots, safety masks, and laundering of lab coats and
12 purchase which were necessary to perform their duties under Defendants' employ. From four (4)
13 years prior to the original filing of this lawsuit and continuing to the present, Defendants
14 consistently failed to reimburse Employees for these necessarily incurred business expenses.

15 70. As a result of the unlawful acts of Defendants, Employees have been deprived of
16 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
17 plus interest and penalties thereon, attorneys' fees, and costs.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

20 **AND 1174.5**

21 **(Against All Defendants)**

22 71. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
23 full herein.

24 72. California Labor Code § 1174 requires that all employers shall keep accurate time
25 and wage records for all employees. California Labor Code § 1174.5 further requires that any
26 employee suffering injury due to a willful violation of the aforementioned obligations may seek
27 damages, including civil penalties, from the employer.

28 73. During the course of Plaintiffs' and Employees' employment, Defendants

consistently failed to maintain accurate time and wage records for Plaintiffs and Employees as required by California Labor Code § 1174 by failing to pay Plaintiffs and Employees proper wages, overtime, and premium pay as discussed above.

74. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code §§ 1174.5 for the three (3) years prior to the filing of this Complaint.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

75. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

76. Numerous Employees are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

77. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

78. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation of employment.

79. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

NINTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.
(Against All Defendants)

80. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

81. Plaintiffs, on behalf of themselves, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees

1 and the general public. Plaintiffs seek to enforce important rights affecting the public interest
2 within the meaning of Code of Civil Procedure
3 § 1021.5.

4 82. Plaintiffs are a “person” within the meaning of Business & Professions Code
5 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
6 relief, restitution, and other appropriate equitable relief.

7 83. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
8 business practices.

9 84. Wage-and-hour laws express fundamental public policies. Paying employees their
10 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
11 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
12 vigorously to enforce minimum labor standards, to ensure that employees are not required or
13 permitted to work under substandard and unlawful conditions, and to protect law-abiding
14 employers and their employees from competitors who lower costs to themselves by failing to
15 comply with minimum labor standards.

16 85. Defendants have violated statutes and public policies. Through the conduct alleged
17 in this Complaint Defendants have acted contrary to these public policies, have violated specific
18 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
19 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiffs,
20 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
21 guaranteed to all employees under the law.

22 86. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
23 violation of the Business & Professions Code § 17200 *et seq.*

24 87. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
25 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
26 reasonable care should have known that their conduct was unlawful; therefore their conduct
27 violates the Business & Professions Code § 17200 *et seq.*

28 88. As a proximate result of the above-mentioned acts of Defendants, Employees have

1 been damaged, in a sum to be proven at trial.

2 89. Unless restrained by this Court Defendants will continue to engage in such
3 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
4 make such orders or judgments, including the appointment of a receiver, as may be necessary to
5 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
6 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
7 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
8 failed to pay.

9 **TENTH CAUSE OF ACTION**

10 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

11 **(Against All Defendants)**

12 90. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
13 full herein.

14 91. Plaintiffs and Employees are aggrieved employees as defined under Labor Code §
15 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
16 alleged violators, Defendants.

17 92. Plaintiffs seek penalties under Labor Code §§ 2698 and 2699 for Defendants'
18 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
19 penalty provisions, without limitation, based on the following California Labor Code sections:
20 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
21 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

22 93. The penalties shall be allocated as follows: 75% to the Labor and Workforce
23 Development Agency (LWDA) and 25% to the affected employee.

24 94. Employees also seek any and all penalties and remedies set forth in Labor Code
25 § 558, which states:

26 (a) Any employer or other person acting on behalf of an
27 employer who violates, or causes to be violated, a section of this
28 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

1 (\$50) for each underpaid employee for each pay period for which
2 the employee was underpaid in addition to an amount sufficient to
3 recover underpaid wages. (2) For each subsequent violation, one
4 hundred dollars (\$100) for each underpaid employee for each pay
5 period for which the employee was underpaid in addition to an
6 amount sufficient to recover underpaid wages. (3) Wages
7 recovered pursuant to this section shall be paid to the affected
8 employee.

6 (b) If upon inspection or investigation the Labor
7 Commissioner determines that a person had paid or caused to be
8 paid a wage for overtime work in violation of any provision of
9 this chapter, or any provision regulating hours and days of work
10 in any order of the Industrial Welfare Commission, the Labor
11 Commissioner may issue a citation. The procedures for issuing,
12 contesting, and enforcing judgments for citations or civil penalties
13 issued by the Labor Commissioner for a violation of this chapter
14 shall be the same as those set out in Section 1197.1.

12 (c) The civil penalties provided for in this section are in addition to
13 any other civil or criminal penalty provided by law.

14 93. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
15 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
16 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
17 for each violation in a subsequent citation, for which the employer fails to provide the employee a
18 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
19 extent that Labor Code § 226.3 applies, Plaintiffs and Employees also seek such penalties on.

20 94. Plaintiff OSCAR MORALES has exhausted his administrative remedy by sending
21 a certified letter to the LWDA and Defendants postmarked on March 24, 2021. The LWDA has
22 not provided notice of its intent to investigate the alleged violations within 65 calendar days of the
23 postmark date of the letters.

24 95. Plaintiff BRENDA KARINA SANDOVAL has exhausted her administrative
25 remedy by sending a certified letter to the LWDA and Defendants postmarked on April 14, 2021.
26 The LWDA has not provided notice of its intent to investigate the alleged violations within 65
27 calendar days of the postmark date of the letters.

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RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

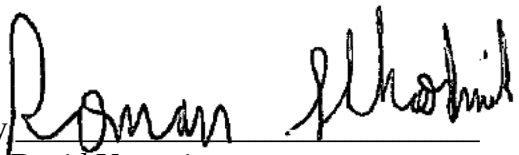
1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
9. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;
10. For penalties pursuant to Labor Code § 1174.5, as may be proven;
11. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
12. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
13. For an order enjoining Defendants and their agents, servants, and employees, and

1 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
2 duties adumbrated in this Complaint;

- 3 14. For all general, special, and incidental damages as may be proven;
4 15. For an award of pre-judgment and post-judgment interest;
5 16. For an award providing for the payment of the costs of this suit;
6 17. For an award of attorneys' fees; and
7 18. For such other and further relief as this Court may deem proper and just.

8
9 DATED: December 1, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

10
11 By 
12 David Yeremian
13 Roman Shkodnik
14 Attorneys for Plaintiff
15 OSCAR MORALES
16 and the putative class

17
18 DATED: December 1, 2021

MOON & YANG, APC

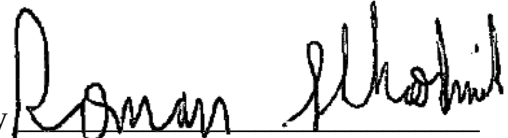
19 By /s/ Allen Feghali
20 Kane Moon
21 Allen Feghali
22 Enzo Nabiev
23 Attorneys for Plaintiff
24 BRENDA KARINA SANDOVAL
25 and the putative class
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: December 1, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
OSCAR MORALES
and the putative class

DATED: December 1, 2021

MOON & YANG, APC

By /s/ Allen Feghali

Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff
BRENDA KARINA SANDOVAL
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

Kane Moon
Allen Feghali
Enzo Nabiev
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017

Attorneys for Plaintiff
BRENDA KARINA SANDOVAL

Attorneys for Defendant
FAIRWAY STAFFING SERVICES, INC.

Attorneys for Defendant
FISHERMAN'S PRIDE PROCESSORS, INC.

[X] (BY ELECTRONIC SERVICE VIA CASE ANYWHERE) Based on a court order, I caused the above-entitled document(s) to be served through Case Anywhere at www.caseanywhere.com addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the Case Anywhere Filing Receipt Page/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

1 **[] (BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package
2 provided by an overnight delivery carrier and addressed to the persons at the address above. I
3 placed the envelope or package for collection and overnight delivery at an office or a regularly
utilized drop box of the overnight delivery carrier.

4 **[X] (STATE)** I certify (or declare) under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

5 Executed on December 7, 2021, at Glendale, California.

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7 Natalia Bermudes
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