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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

HECTOR ARZOLA; on behalf of himself and
all others similarly situated;

Plaintiff,

vs.

ALL STAR GLASS, INC., and DOES 1 through
20, inclusive;

Defendants.

CASE NO.: 56-2021-00553193-CU-OE-VTA

**CLASS AND PAGA ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) FAILURE TO PROVIDE COMPLIANT MEAL PERIODS;
- (4) FAILURE TO PROVIDE COMPLIANT REST;
- (5) WAITING TIME PENALTIES;
- (6) FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS;
- (7) UNFAIR COMPETITION; and
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff HECTOR ARZOLA, an individual (“Plaintiff”), on behalf of himself and all
2 others similarly situated (hereinafter “Class Members”), complain and allege as follows:

3 **I. INTRODUCTION**

4 1. This is a Class Action pursuant to California Code of Civil Procedure section 382,
5 on behalf of Plaintiff and all other current and former similarly situated employees employed by
6 defendant ALL STAR GLASS, INC. (“Defendant Mass”) and DOES 1 to 20, inclusive,
7 (collectively “Defendants”), within the State of California during the relevant statutory period.

8 2. This is also a Representative Action under the California Private Attorneys General
9 Act of 2004 (“PAGA”) and California Labor Code § 2698, *et seq.*, on behalf of all individuals
10 who are or were employed by Defendants as non-exempt hourly workers within the State of
11 California from April 14, 2020 and continuing into the present.

12 3. From at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendants have consistently failed to pay minimum and overtime wages for all hours
14 worked, failed to provide compliant meal and rest periods, failed to pay missed meal and rest
15 period premiums, failed to issue accurate/complete wage statements, and failed to pay all wages
16 due upon separation from employment.

17 4. Plaintiff on behalf of himself and all other similarly situated employees, pursuant to
18 California Business and Professions Code sections 17200 through 17208, also seek all monies
19 owed but withheld and retained by Defendants to which Plaintiff and the Class Members are
20 entitled.

21 5. Plaintiff on behalf of themselves, the State of California, and all aggrieved
22 employees, pursuant to Labor Code §2699, also seeks penalties for each and every pay period from
23 April 14, 2020 through the date of the trial, in which Defendants violated the provisions of the
24 California Labor Code referenced herein as well as all applicable Industrial Welfare Commission
25 Wage Orders.

26 **II. JURISDICTION AND VENUE**

27 6. This Court has subject matter jurisdiction over all causes of action asserted herein
28 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil

1 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
2 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
3 arises under the laws of the State of California or is subject to adjudication in the courts of the
4 State of California.

5 7. This Court has personal jurisdiction over Defendants because they have caused
6 injuries in Ventura County and the State of California through their acts, and by their violation of
7 the California Labor Code, California state common law, and California Business & Professions
8 Code sections 17200, *et seq.* Defendants also transact business throughout California and have
9 obtained the benefits of the laws of the State of California and are therefore subject to the personal
10 jurisdiction of this Court.

11 8. Venue as to each defendant is proper in this Court pursuant to Code of Civil
12 Procedure § 395(a). Defendant All Star Glass, Inc. operates within California and does business
13 within Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiff and the
14 Class Members within the State of California and Ventura County.

15 9. This case should be classified as complex according to California Rules of Court,
16 Rule 3.400 and assigned to a complex litigation judge and department as it is a class action, will
17 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
18 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
19 and would require substantial post judgment judicial supervision.

20 10. This matter is not appropriate for removal under the Class Action Fairness Act, 28
21 U.S.C. 1332, as the amount in controversy for Plaintiff and the Class Members' claims, in
22 aggregate, is less than \$5,000,000. Plaintiff are also informed and believe that more than two-
23 thirds of the Class Members are citizens of the State of California, and that within the past three
24 years, there has not been a class action filed against the Defendants for the same, or similar
25 allegations. Additionally, all of the allegations herein occurred in the State of California. As such,
26 if the amount in controversy does exceed \$5,000,000, this matter would still not be appropriate for
27 removal under the Local Controversy exception to the Class Action Fairness Act, 28 U.S.C. §
28 1332(d)(4)(A).

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III. PARTIES

11. Plaintiff is a resident of Ventura Country, California and was employed by Defendant All Star Glass, Inc. during the relevant statutory period.

12. Plaintiff seeks to represent a class composed and defined as “*all hourly non-exempt individuals who are or were employed by Defendants in California from four years prior to the filing of this Complaint through the date of trial* (the “Class Period”).

13. Plaintiff also represent the State of California as well as the following group of aggrieved employees: *all individuals who are or were employed by Defendants in California from April 14, 2020 and continuing to the present* (“Aggrieved Employees”).

14. Plaintiff are informed and believe and thereon alleges that Defendant All Star Glass, Inc. is a California corporation authorized to do business and doing business in Ventura County and throughout California and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods.

15. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of defendants sued herein as DOES 1 through 20, inclusive, but on information and belief allege that those defendants are legally responsible for the payment of wages and penalties and damages to Plaintiff and all Class Members by virtue of defendants’ unlawful actions and practices and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE defendants when ascertained.

16. Plaintiff also alleges that they and the Class Members worked under the joint direction and control of Defendants and that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other ddefendants. On information and belief, a unity of interest and ownership between each defendant exists such that all Defendants acted as a single employer of Plaintiff and other similarly situated employees.

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1 17. Furthermore, on information and belief, Defendants are an integrated enterprise and
2 should be treated as a single employer because Defendants share an interrelation of operations,
3 with common human resources and personnel policies and shared common offices and facilities.
4 Upon information and belief, Defendants share common management, a centralized control of
5 labor operations, and common ownership or financial control.

6 18. Also, Plaintiff is informed and believe and thereon allege that the defendants sued
7 herein as DOES 1-20 are now and at all material times herein mentioned were the owner/owners of
8 certain other defendants and the actual employer of Plaintiff and the Class Members or, in the
9 alternative, were individuals employed by Defendant Maas Brothers as a managerial and/or
10 supervisory employees and/or agents. In addition, Plaintiff alleges that at all relevant times herein
11 the defendants sued herein as DOES 1-20 had the authority, in the interest of certain other
12 defendants, to exercise independent judgment to hire, transfer, promote, discharge, assign,
13 discipline, or take other similar actions against Plaintiff, and were in Plaintiff' chain of command
14 at the time of and direct participants in the wrongful conduct which constitutes the basis of
15 Plaintiff' complaint herein. Plaintiff also alleges that the defendants sued herein as DOES 1-20
16 and certain other defendants are the agents, servants, employees, partners, affiliates, and/or
17 representatives of each other, and were, at all times herein mentioned, acting within the course,
18 scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of
19 each other. Furthermore, in conducting themselves in the manner described herein, the defendants
20 sued herein as DOES 1-20 and certain other defendants were acting in active concert with one
21 another such that the acts of each were fully attributable to the others in all material respects.
22 Plaintiff also allege that certain other defendants were merely the alter ego of the defendants sued
23 herein as DOES 1-20 in that there existed a unity of interest and ownership such that any
24 separateness between them ceased to exist and the defendants sued herein as DOES 1-20 exercised
25 undue dominance, control, influence, and management over certain other defendants. Plaintiff
26 further allege that, at all relevant times, certain other defendants have been inadequately
27 capitalized to conduct business, have failed to follow appropriate corporate formalities, and have
28 simply been a shell and instrumentality through which the defendants sued herein as DOES 1-20

1 have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any
2 liability attached to certain other defendants should be imposed jointly and severally against the
3 defendants sued herein as DOES 1-20. Adherence to the fiction of the separate existence of these
4 corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and
5 promoting injustice.

6 **IV. SUMMARY OF FACTS**

7 19. Throughout the Class Period, Plaintiff and the Class Members were not paid at least
8 minimum wages for all of their hours worked.

9 20. Labor Code § 1197 states the California requirement that employees must be paid at
10 least the minimum wage fixed by the Commission, and any payment of less than the minimum
11 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the
12 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
13 minimum wage.” IWC Wage Order, § 4 also obligates employers to pay each employee minimum
14 wages for all hours worked.

15 21. These minimum wage standards apply to each hour employees worked for which
16 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
17 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
18 or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005)
19 135 Cal.App.4th 314, 324.

20 22. Plaintiff and the Class Members were not paid at least minimum wages for all of
21 their hours worked due to Defendants’ illegal rounding policies. Because all of Defendants’
22 employees are required to start working at the same time, Defendants directed their employees to
23 clock in prior to their scheduled start time to avoid creating a bottleneck at the punch machine(s).
24 Despite being subject to Defendants’ control, the employees were not compensated for the time
25 during which they were clocked-in prior to the official start of their shifts. This policy and practice
26 routinely under-compensated Plaintiff and Class Members and resulted in a net benefit to
27 Defendants. In other words, Defendants’ rounding policies are not neutral and result in systematic
28 under compensation. As a result, Plaintiff and the Class Members were not fully compensated for

1 all hours worked for Defendants.

2 23. Accordingly, Defendants have and continue to violate Labor Code sections 1194,
3 1194.2, 1197, and 1197.1.

4 24. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
5 damages for violations of Labor Code § 1194. Where an employee, such as Plaintiff and the Class
6 Members, are not paid for all hours worked under Labor Code § 1194, the employee may recover
7 minimum wages for the time associated with the time for which they received no compensation.
8 See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that
9 employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if
10 they also showed they were paid less than minimum wage]; *accord Andrade v. Arby's Rest. Grp.,*
11 *Inc.* (N.D. Cal. Dec. 12, 2016) 2016 U.S. Dist. LEXIS 172319, at *20-21. Since Defendants failed
12 to provide Plaintiff and the Class Members with compensation for all hours worked, each are
13 entitled to recover liquidated damages under Labor Code § 1194.2.

14 25. Labor Code § 1197.1 authorizes employees who are paid a wage less than the
15 minimum fixed by an applicable state or local law, or by an order of the commission a civil
16 penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
17 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
18 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
19 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
20 period for which the employee is underpaid regardless of whether the initial violation is
21 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and the
22 Class Members for all wages for all hours worked. Accordingly, and to the extent permitted by
23 law, Plaintiff and the Class Members are entitled to recover liquidated damages for violations of
24 Labor Code § 1197.1.

25 26. Labor Code section 510 requires an employer to compensate an employee who
26 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
27 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
28 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to

1 compensate employees at no less than twice the regular rate of pay when an employee works more
2 than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of
3 work. In accordance with Labor Code section 1194, Plaintiff and the Class Members could not
4 agree to work for a lesser wage. Pursuant to Section 3 of IWC Wage Order(s), employees shall not
5 be employed more than eight (8) hours in any workday or more than 40 hours in any workweek
6 unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for
7 all hours worked over 40 hours in the workweek.

8 27. Furthermore, during the relevant period, Defendants have had a consistent policy of
9 failing to pay overtime wages at the proper amounts and/or failing to pay for all overtime hours
10 worked to Plaintiff and the Class Members. When Plaintiff and the Class Members worked
11 overtime, Defendants often failed to include all compensation when calculating the regular rate of
12 pay used in overtime calculations. However, Defendants calculated the regular rate of pay for
13 Plaintiff and the Class Members based on the hourly rate they received only and omitted the other
14 non-hourly pay earnings received during those pay periods.

15 28. By their common practice of requiring Plaintiff and the Class Members to work in
16 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
17 compensating them at the rate of one-half (1½) their regular rate of pay, Defendants willfully
18 violated the provisions of Labor Code section 510, 1194, and 1199, as well as applicable IWC
19 Wage Order(s).

20 29. Based on the same factual allegations, Plaintiff and the Class Members are also
21 entitled to penalties under Labor Code § 1199.

22 30. Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to
23 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
24 applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code §
25 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of
26 more than 5 hours per day without providing the employee with an uninterrupted meal period of
27 not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of
28 more than 10 hours per day without providing the employee with a second meal period of not less

1 than 30 minutes.” Furthermore, Labor Code 512(b) requires employers to provide uninterrupted
2 meal periods to employees prior to the commencement of the employees’ sixth hour of work.
3 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041.

4 31. Notably, Defendants did not timely relieve Plaintiff and the Class Members of all of
5 their duties for full, uninterrupted 30-minute meal periods prior to the commencement of the sixth
6 hour of their work.

7 32. Additionally, Plaintiff and the Class Members often worked shifts in excess of 10
8 hours, yet Defendants did not provide Plaintiff and the Class Members with a second meal period
9 during such times.

10 33. Further, pursuant to Labor Code 226.7(c), if an employer failed to provide an
11 employee with a meal or rest period, “the employer shall pay the employee one additional hour of
12 pay at the employee’s regular rate of compensation for each workday that the meal or rest or
13 recovery period is not provided.”

14 34. Plaintiff and the Class Members were not provided meal period premiums when
15 they were not provided timely compliant duty-free 30-minute meal periods. Accordingly, Plaintiff
16 and the Class Members were regularly denied their meal periods in violation of Labor Code 226.7,
17 512, and the applicable IWC Wage Order.

18 35. Section 12 of IWC Wage Order states in pertinent part: “Every employer shall
19 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
20 middle of each work period. The authorized rest period time shall be based on the total hours
21 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
22 thereof.”

23 36. Here, Defendants failed to provide Plaintiff and the Class Members with duty-free
24 rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.
25 Since Defendants did not offer Plaintiff and the Class Members the opportunity to receive a
26 compliant off-duty rest period, “the court may not conclude employees voluntarily chose to
27 skip...breaks.” *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015) (“[i]f
28 an employer fails to provide legally compliant meal or rest breaks, the court may not conclude

1 employees voluntarily chose to skip those breaks.”); *accord Brinker* 53 Cal. 4th at 1033 (“No issue
2 of waiver ever arises for a rest break that was required by law but never authorized; if a break is not
3 authorized, an employee has no opportunity to decline to take it.”).

4 37. Additionally, Defendants failed to provide their employees with a compliant third
5 rest periods during shifts in which those employees worked in excess of ten (10) hours. This is not
6 in accord with California law, as it does not provide or authorize a rest period for every four (4)
7 hours worked or major fraction thereof, as required by California law.

8 38. In addition to failing to authorize and permit compliant rest periods, Plaintiff and
9 the Class Members were not compensated with one (1) hours worth of pay at their regular rate of
10 compensation when they were not provided with a compliant rest period in accordance with Labor
11 Code § 226.7(b).

12 39. Plaintiff and the Class Members were not provided rest break premiums for their
13 missed rest breaks. Accordingly, Plaintiff and the Class Members were also regularly denied their
14 rest breaks in violation of Labor Code 226.7, 512, and IWC Wage Order(s).

15 40. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable
17 immediately.” Labor Code § 202(a) states in pertinent part: “If an employee not having a written
18 contract for a definite period quits his or her employment, his or her wages shall become due and
19 payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice
20 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
21 of quitting.” Labor Code § 203(a) states, “If an employer willfully fails to pay, without abatement
22 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of
23 an employee who is discharged or who quits, the wages of the employee shall continue as a
24 penalty from the due date thereof at the same rate until paid or until an action therefor is
25 commenced; but the wages shall not continue for more than 30 days.”

26 41. Here, Defendants failed to pay Plaintiff and the Class Members all wages that were
27 due and owing (including all minimum and overtime wages owed, meal and rest period premiums,
28 etc.) within the required time following the end of their employment in accordance with Labor

1 Code §§ 201-202. As a result, Plaintiff and all such Class Members are entitled to 30 days of
2 wages as a “waiting time penalty.”

3 42. Labor Code § 226(a) requires an employer to provide its employees with itemized
4 wage statements accurately stating (1) gross wages earned, (2) total hours worked by the
5 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
6 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders
7 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
8 dates of the period for which the employee is paid, (7) the name of the employee and only the last
9 four digits of his or her social security number or an employee identification number other than a
10 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
11 applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee.

13 43. At all relevant times herein, Defendants were subject to Labor Code section 2802,
14 which states that “an employer shall indemnify his or her employees for all necessary expenditures
15 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
16 his or her obedience to the directions of the employer.” The purpose of this section is to “prevent
17 employers from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-*
18 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562).

19 44. Here, Defendants failed to fully reimburse the Class Members for necessary
20 expenditures incurred as a direct consequence and requirement of performing their job duties,
21 including the costs of the use of their tools and personal cell phones for work purposes.
22 Consequently, Defendants failed to comply with Labor Code section 2802 and Applicable Wage
23 Orders.

24 45. Here, based on Defendants’ failure to pay Plaintiff and the Class Members for all
25 hours worked, and pay meal and rest period premiums for noncompliant meal and rest periods,
26 Defendants issued wage statements which failed to accurately identify the gross wages earned, the
27 total hours worked, the net wages earned, and the correct corresponding number of hours worked
28 at each hourly rate by their employees, in violation of Labor Code Section 226(a)(1), (2), (5) and

1 (9). Thus, Defendants have violated Labor Code section 226(a)(1), (2), (5) and (9) with respect to
2 Plaintiff and the Class Members.

3 46. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
4 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
5 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
6 each violation in a subsequent citation, for which the employer fails to provide the employee a
7 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” Thus, for
8 the violations of Labor Code section 226 described above, Plaintiff and the Class Members may
9 also recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code § 226(a).

10 47. In addition to violating Labor Code § 226(a), Defendants also knowingly and
11 intentionally failed to provide Plaintiff and the Class Members with accurate itemized wage
12 statements in violation of Labor Code § 226(e). Defendants undeniably knew that they were not
13 providing Plaintiff and the other Class Members with wage statements required by California
14 law. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
15 defendant knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew
16 that it was not providing total hours worked to Plaintiff or other employees paid on commission”
17 even though it believed that employees paid solely on commission or commission and salary “are
18 exempt and therefore we do not record hours on a wage statement.”).

19 48. Plaintiff fully and completely exhausted their administrative remedies under PAGA
20 prior to proceeding with this action. On April 14, 2021, Plaintiff filed his PAGA Notice online
21 with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to
22 Defendant All Star Glass, Inc. setting forth the facts and theories of the violations alleged against
23 Defendant, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff
24 electronically submitted the \$75.00 filing fee with the LWDA. Therefore, once more than sixty-
25 five (65) days have passed since that date, Plaintiff will have fully satisfied the administrative
26 prerequisites to suit under the PAGA and this Complaint will be deemed amended to include the
27 PAGA allegations enumerated below. Once this occurs, Plaintiff seek to recover all applicable and
28 available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees, costs, and/or

1 other damages as permitted by PAGA through a representative action pursuant to the PAGA and
2 the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969.

3 49. Plaintiff is not required to, nor do they, seek class certification of the PAGA claims
4 under Code of Civil Procedure § 382.

5 **V. CLASS ACTION ALLEGATIONS**

6 50. Plaintiff brings this action on behalf of himself and all others similarly situated as a
7 class action pursuant to Code of Civil Procedure § 382.

8 51. Plaintiff seeks to represent the following class and subclasses:

9 **The Class:** *all hourly non-exempt individuals who are or were employed by*
10 *Defendants in in California from four years prior to the filing of this complaint*
through the date of trial.

11 **The Overtime Subclass:** *all hourly non-exempt individuals who are or were*
12 *employed by Defendants in California who worked in excess of eight hours in a*
13 *day, or in excess of forty hours in a workweek, from four years prior to the filing*
of this complaint through the date of trial.

14 **The Meal Period Subclass:** *all hourly non-exempt individuals who are or were*
15 *employed by Defendants in California who worked at least one shift greater than*
16 *five hours, from four years prior to the filing of this complaint through the date of*
trial.

17 **The Rest Break Subclass:** *all hourly non-exempt individuals who are or were*
18 *employed by Defendants in California who worked at least one shift greater than*
19 *3.5 hours, from four years prior to the filing of this complaint through the date of*
trial.

20 **The Waiting Time Penalty Subclass:** *all hourly non-exempt individuals who*
21 *were employed by Defendants in in California whose employment with*
22 *Defendants ended from three years prior to the filing of this complaint through*
the date of trial.

23 **The Wage Statement Subclass:** *all hourly non-exempt individuals who are or*
24 *were employed by Defendants in California who received at least one wage*
25 *statement from Defendants from one year prior to the filing of this complaint*
through the date of trial.

26 52. Plaintiff reserves the right to amend or modify the class and subclass descriptions
27 with greater specificity or further division into subclasses or limitation to particular issues as
28 appropriate.

1 53. Plaintiff, as class representatives, is a member of the class and subclasses that he
2 seeks to represent.

3 54. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll
6 records.

7 55. **Numerosity:** The potential members of the class as defined are so numerous that a
8 joinder of all Class Members is impracticable. Although the exact number is currently unknown to
9 Plaintiff, this information is easily ascertainable from Defendants' personnel and payroll records.

10 56. **Commonality:** There are questions of law and fact common to the class which
11 predominate over any questions affecting only individual members of the class, including without
12 limitation:

13 i. Whether Defendants violated the California Labor Code and the applicable IWC
14 Wage Order by failing to pay minimum wages to Plaintiff and the Class Members for all hours
15 worked;

16 ii. Whether Defendants violated Labor Code section 510 by not compensating Plaintiff
17 and the Overtime Subclass Members with proper overtime wages for all overtime worked;

18 iii. Whether Defendants violated IWC Wage Order Nos. 1-2001 by not compensating
19 Plaintiff and the Overtime Subclass Members with proper overtime wages for all overtime worked;

20 iv. Whether Defendants violated the California Labor Code and applicable IWC Wage
21 Order by failing to provide compliant meal periods to Plaintiff and the Meal Period Subclass
22 Members, and whether Defendants failed to compensate Plaintiff and the Meal Period Subclass
23 Members with one additional hour of premium pay for each instance when a compliant meal
24 period was not provided;

25 v. Whether Defendants violated the California Labor Code and applicable IWC Wage
26 Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break Subclass
27 Members, and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
28 Members with one additional hour of premium pay for each instance when a compliant rest break

1 was not provided;

2 vi. Whether Defendants violated the California Labor Code by failing to pay all wages
3 due upon separation of employment between Defendants and Plaintiff and the Waiting Time
4 Penalties Subclass Members, whether such separation was voluntary or involuntary;

5 vii. Whether Defendants violated Labor Code section 226(a) by not furnishing Plaintiff
6 and the Wage Statement Subclass Members with accurate and/or complete wage statements;

7 viii. Whether Defendants violated the California Labor Code by paying vested vacation
8 wages to the Vested Vacation Subclass at a rate lower than the final rate of pay upon separation of
9 employment;

10 ix. Whether Defendants violated California Business & Professions Code §§ 17200 *et*
11 *seq.* by their unlawful practices as alleged herein; and

12 x. Whether Defendants violated § 17200 *et seq.* of the California Business and
13 Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 226, 226.7,
14 510, 512, 1194, 1194.2, and 1197 among possibly other sections inadvertently omitted, and any
15 applicable IWC Wage Orders, which violations constitute false, fraudulent, unlawful, unfair and
16 deceptive business practices;

17 57. **Typicality:** Plaintiff' claims, as class representatives, is typical of the claims of the
18 class and the subclasses. Plaintiff, like other Class Members, was subjected to Defendants'
19 ongoing Labor Code and Wage Order violations including their failure to pay minimum wages,
20 failure to pay overtime wages, failure to provide compliant meal periods, failure to provide
21 compliant rest periods, failure to timely pay final wages, and failure to provide accurate itemized.

22 58. **Adequacy of Representation:** Plaintiff, as the class rrepresentatives, will fairly and
23 adequately represent and protect the interests of the class. Plaintiff' interests are not in conflict
24 with those of the class. Plaintiff' counsel are competent and experienced in litigating large
25 employment class actions and other complex litigation matters, including cases like this case.

26 59. **Superiority of Class Action:** Class certification is appropriate because a class
27 action is superior to other available means for the fair and efficient adjudication of this
28 controversy. Individual joinder of all Class Members is not practicable, and questions of law and

fact common to the class predominate over any questions affecting only individual members of the class. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Labor Code § 1194, 1194.2, 1197; IWC Wage Order)

Plaintiff and Class Members Against All Defendants

60. Plaintiff re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

61. Plaintiff and Class Members are and/or were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

62. At all relevant times, Plaintiff and the Class Members were not paid at least minimum wages for all of their hours worked due to, among other practices, Defendants' practice of requiring Plaintiff and the Class Members to perform work-related tasks, including but not limited to changing into their mandated work apparel prior to clocking in and after clocking out. Despite being subject to Defendants' control while performing said tasks, Defendants did not provide any compensation for the time it took to complete these processes. As a result, Plaintiff and the Class Members were not fully compensated for all minimum wages owed for all hours worked.

63. As a result of Defendants' practices described above, Plaintiff and the Class Members were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

64. Additionally, at all times mentioned, Defendants unevenly rounded the time worked by Plaintiff and the Class Members, resulting in Plaintiff and the Class Members not being fully compensated for all minimum wages owed for all hours worked.

1 65. Consequently, Defendants violated California Labor Code laws and minimum wage
2 laws, *inter alia*, Labor Code §§ 1194, 1194.2, 1197 and IWC Wage Order, § 4.

3 66. Plaintiff are informed and believe and thereon allege that Defendants intentionally,
4 willfully, and improperly failed to pay wages to Plaintiff and the Class Members.

5 67. Defendants' conduct was willful, as Defendants knew that Plaintiff and Class
6 Members were entitled to be paid wages throughout the statutory period for each hour worked,
7 including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

8 68. At all material times, defendants DOES 1 through 20 were and/or are the
9 employers of Plaintiff, the Class Members, or were persons acting on behalf of said employer(s),
10 within the meaning of California Labor Code § 558.

11 69. As a result of Defendants' wrongful conduct, Plaintiff and the Class Members have
12 been damaged in amounts to be proven at trial.

13 70. Plaintiff, on behalf of themselves and the Class Members seek recovery of all
14 unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit,
15 pursuant to Labor Code §§ 1194, 1194.2 and 1197, against Defendants in an amount to be proven
16 at trial.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME WAGES**

19 (Labor Code § 510, 1194; IWC Wage Order)

20 *Plaintiff and the Overtime Subclass Members Against All Defendants*

21 71. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
22 the preceding paragraphs.

23 72. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and
24 provided: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
25 workday and any work in excess of forty hours in any one workweek . . . shall be compensated at
26 the rate of no less than one and one-half times the regular rate of pay for an employee."

27 73. Pursuant to Section 3 of IWC Wage Order, employees shall not be employed more
28 than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee

1 receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked
2 over 40 hours in the workweek.

3 74. At all times mentioned, Plaintiff and the Overtime Subclass Members worked for
4 Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than
5 forty (40) hours in a workweek and were not paid proper overtime wages for all overtime hours
6 worked. During the relevant period, Defendants have had a consistent policy of failing to pay
7 overtime wages at the proper amounts and/or failing to pay for all overtime hours worked to
8 Plaintiff and the Class Members. When Plaintiff and the Class Members worked overtime,
9 Defendants often failed to include all compensation when calculating the regular rate of pay used
10 in overtime calculations. For instance, Plaintiff and the Class Members would receive, along with
11 their hourly base rates of pay for their working hours, additional remuneration of 'shift premium'
12 entitled payments. However, Defendants calculated the regular rate of pay for Plaintiff and the
13 Class Members based on the hourly rate they received only and omitted the other non-hourly pay
14 earnings received during those pay periods.

15 75. Additionally, at all times mentioned, Defendants unevenly rounded the time worked
16 by Plaintiff and the Overtime Subclass Members, resulting in Plaintiff and the Overtime Subclass
17 Members being paid less than one and one-half times their regular rate of pay for their overtime
18 hours worked.

19 76. Accordingly, by requiring Plaintiff and the Overtime Subclass Members to work in
20 excess of eight (8) hours per day and/or forty (40) hours per week and without properly
21 compensating overtime wages for all overtime hours worked, as described above, Defendants
22 willfully violated the provisions of Labor Code section 1194.

23 77. As a result of the unlawful acts of Defendants, Plaintiff and the Overtime Subclass
24 Members have been deprived of overtime wages in amounts to be determined at trial, and are
25 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs,
26 pursuant to Labor Code sections 1194 and 1199; Code of Civil Procedure section 1021.5; and Civil
27 Code section 3287.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 (Labor Code § 226.7 and 512; IWC Wage Order)

4 *Plaintiff and the Meal Period Subclass Against All Defendants*

5 78. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
6 the preceding paragraphs.

7 79. Plaintiff and the Meal Period Subclass Members are and/or were “non-exempt”
8 employees of Defendants who did not receive proper protections and benefits of the laws
9 governing mandatory meal periods.

10 80. Labor Code § 512(a), in part, provides that employers, including Defendants, may
11 not employ an employee for a work period of more than five hours per day without providing an
12 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
13 that if the total work period per day of the employee is no more than six hours, the meal period
14 may be waived by mutual consent of both the employer and the employee. Employers may not
15 employ an employee for a work period more than 10 hours per day without providing the
16 employee with a second meal period of not less than 30 minutes. Furthermore, Labor Code 512(b)
17 requires employers to provide uninterrupted meal periods to employees prior to the
18 commencement of the employees’ sixth hour of work.

19 81. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order,
20 Defendants shall pay an employee one additional hour of pay at the employee’s regular rate of
21 compensation for each meal period that is missed.

22 82. At all relevant times herein, Plaintiff and the Meal Period Subclass Members were
23 denied the timely 30-minute off-duty meal periods to which they were entitled. Specifically,
24 Defendants did not timely relieve Plaintiff and the Meal Period Subclass Members of all of their
25 duties for full, uninterrupted 30-minute meal periods prior to the commencement of the sixth hour
26 of their work.

27 83. Additionally, at all relevant times, Plaintiff and the Meal Period Subclass Members
28 often worked shifts in excess of ten (10) hours, yet Defendants did not provide Plaintiff and the

1 Class Members with a second meal period during such times.

2 84. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
3 Order every pay period with respect to Plaintiff and the Meal Period Subclass Members because
4 Plaintiff and the Meal Period Subclass Members were not provided with all mandatory meal
5 periods and Defendants failed to pay Plaintiff and the Meal Period Subclass Members one
6 additional hour of compensation in lieu thereof.

7 85. On information and belief, Plaintiff and the Meal Period Subclass Members did not
8 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
9 obtained from Plaintiff and the Meal Period Subclass Members were not willfully obtained, were
10 not voluntarily agreed to, were a condition of employment, or were a part of a contract of unlawful
11 adhesion. Defendants did not permit or authorize Plaintiff and the Meal Period Subclass Members
12 to take meal periods in accordance with California law.

13 86. By their failure to provide Plaintiff and the Meal Period Subclass Members with
14 meal periods as required by California law, and failing to pay one hour of additional wages in lieu
15 of each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
16 the applicable IWC Wage Order. Accordingly, Defendants are liable for one hour of additional
17 wages at the employee's regular rate of compensation for each workday that a meal period and/or
18 paid rest break was not lawfully provided in an amount to be proven at time of trial.

19 87. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
20 and the applicable IWC Wage Order, Defendants, and each DOE, are liable to Plaintiff and the
21 Meal Period Subclass Members for unpaid wage premiums, penalties, costs, and interest.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REST BREAKS**

24 (Labor Code § 226.7; IWC Wage Order)

25 *Plaintiff and the Rest Break Subclass Against All Defendants*

26 88. Plaintiff re-allege and incorporate by reference each and every allegation set forth
27 in the preceding paragraphs.

1 89. Plaintiff and the Rest Break Subclass Members are and/or were “non-exempt”
2 employees of Defendants who did not receive proper protections and benefits of the laws
3 governing mandatory rest breaks.

4 90. Labor Code § 226.7 requires employers, including Defendants, to provide rest
5 breaks to their non-exempt employees as mandated by Order of the Industrial Welfare
6 Commission.

7 91. Section 12 of IWC Wage Order states, in part, that every employer shall authorize
8 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
9 each work period. Employees shall receive a 10-minute rest period every four hours or major
10 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
11 hours worked, for which there shall be no deduction from wages.

12 92. Furthermore, in an eight-hour (8) shift, rest breaks should fall on either side of the
13 meal break, absent factors rendering such scheduling impossible.

14 93. Pursuant to Labor Code § 226.7(b) and the above-referenced sections of the
15 applicable Wage Order, Defendants shall pay Plaintiff and the Rest Break Subclass Members one
16 (1) additional hour of pay at their regular rate of compensation for each day that a compliant rest
17 period is not provided.

18 94. At all relevant times, Plaintiff and the Rest Break Subclass Members were not
19 provided with ten (10) minutes of net rest break time for every four (4) hours worked, or major
20 fraction thereof, as mandated by California law. Moreover, Plaintiff and the Rest Break Subclass
21 Members were not provided rest break premiums for their missed rest breaks.

22 95. Additionally, at all relevant times mentioned herein, Plaintiff and the Rest Break
23 Subclass Members often worked in excess of ten (10) hours in a shift, yet Defendants failed to
24 authorize and/or permit a third mandated rest break. Accordingly, Plaintiff and the Rest Break
25 Subclass Members were regularly denied their rest breaks in violation of Labor Code 226.7, 512,
26 as well as applicable IWC Wage Order(s). As a result, Plaintiff and the Rest Break Subclass
27 Members were not provided net rest periods of at least then (10) minutes for each four (4)-hour
28 work period, or major fraction thereof.

1 96. Defendants violated Labor Code §§ 226.7 and the applicable IWC Wage Order
2 every pay period with respect to Plaintiff and the Rest Break Subclass Members because Plaintiff
3 and the Rest Break Subclass Members were not provided with all mandatory rest periods and
4 Defendants failed to pay Plaintiff and the Rest Break Subclass Members one (1) additional hour of
5 compensation in lieu thereof.

6 97. By their failure to provide Plaintiff and the Rest Break Subclass Members with rest
7 breaks as required by California law, and failing to pay one (1) hour of additional wages in lieu of
8 each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and the
9 above-referenced IWC Wage Order. Accordingly, Defendants are liable for one (1) hour of
10 additional wages at the employee's regular rate of compensation for each workday that a meal
11 period and/or paid rest break was not lawfully provided in an amount to be proven at time of trial.

12 98. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and the
13 applicable IWC Wage Order, Defendants are liable to Plaintiff and the Rest Break Subclass
14 Members for unpaid wage premiums, penalties, costs, and interest.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO TIMELY PAY FINAL WAGES**

17 (Labor Code § 201–203)

18 *Plaintiff and the Waiting Time Penalty Subclass Against All Defendants*

19 99. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
20 the preceding paragraphs.

21 100. The actionable period for this cause of action is three (3) years prior to the filing of
22 this complaint through the present, and on-going until the violations are corrected, or the class is
23 certified.

24 101. Sections 201 and 202 of the California Labor Code requires Defendants to pay all
25 compensation due and owing to Plaintiff and the Waiting Time Penalty Subclass Members during
26 the actionable period for this cause of action at or around the time that their employment is or was
27 terminated or ended.

103. Defendants willfully failed to pay Plaintiff and the Waiting Timeline Penalty Subclass Members for all minimum and overtime wages owed, as well as meal period premiums and rest period premiums prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

104. As a result, Defendants are liable to Plaintiff and the Waiting Timeline Penalty Subclass Members for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties.)

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226(a))

Plaintiff and the Wage Statement Subclass Against All Defendants

105. Plaintiff re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

106. Labor Code sections 226(a)(1), (2), (5) and (9) require employers semimonthly or at the time of each payment of wages, to furnish each of his or her employees, an accurate itemized statement in writing showing the gross wages earned, the total hours worked, the net wages earned, as well as the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

107. From at least one (1) year prior to the filing of this Complaint through the present, Defendants knowingly and intentionally failed to issue accurate and complete itemized wage statements in writing to Plaintiff and the Wage Statement Subclass Members that accurately indicated the gross wages earned, the total hours worked, the net wages earned, as well as the

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by Plaintiff and the Wage Statement Subclass Members.

3 108. Due to Defendants' failure to pay Plaintiff and the Wage Statement Subclass
4 Members all minimum and overtime wages owed as well as meal and rest period premiums for
5 noncompliant meal and rest periods, the wage statements issued by Defendants did not indicate the
6 correct amount of gross wages earned, total hours worked, net wages earned, or the correct
7 corresponding number of hours worked at each hourly rate in violation of Labor Code section
8 226(a)(1), (2), (5) and (9).

9 109. Defendants have therefore knowingly and intentionally failed to comply with Labor
10 Code section 226(a). IWC Wage Order requires Defendants to maintain accurate records showing
11 the total wages paid each payroll period, the total hours worked in the payroll period and
12 applicable rates of pay. Defendants failed to keep accurate records of the total wages paid, the
13 total hours worked, or the applicable rates of pay.

14 110. An employee suffering injury as a result of a knowing and intentional failure by an
15 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
16 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
17 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
18 an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and
19 reasonable attorneys' fees.

20 111. The absence of accurate information on their wage statements has delayed timely
21 challenge to Defendants' unlawful pay practices, requires discovery and mathematical
22 computations to determine the amount of wages owed, causes difficulty and expense in attempting
23 to reconstruct time and pay records, and led to submission of inaccurate information about wages
24 and amounts deducted from wages to state and federal governmental agencies.

25 112. Accordingly, Plaintiff and the Wage Statement Subclass Members are entitled to
26 damages according to proof.
27
28

1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR AND UNLAWFUL COMPETITION**

3 (Business and Professions Code § 17200 *et seq.*)

4 *Plaintiff and All Classes Against All Defendants*

5 113. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
6 the preceding paragraphs.

7 114. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
8 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
9 Class Members, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the
10 unfair and unlawful business practices of Defendants as alleged herein.

11 115. Defendants are “persons” as defined under Business & Professions Code § 17021.

12 116. As alleged herein, Defendants engaged in conduct that violated California’s wage
13 and hour laws, including failure to pay minimum wages, failure to pay overtime wages, failure to
14 provide mandated meal periods and rest breaks, failure to timely pay final wages, and failure to
15 pay all vested vacation pay all in order to decrease their costs and increase their profits.

16 117. At all times relevant herein, Defendants did not pay Plaintiff and the Class
17 Members wages and monies and other financial obligations to which they were entitled.

18 118. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders,
19 Class Members, including Plaintiff, suffered a loss of wages and monies, all in an amount to be
20 shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and
21 laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

22 119. Defendants’ violations of the California Labor Code and IWC Wage Orders and
23 their scheme to lower their payroll costs as alleged herein, constitute unlawful and unfair business
24 practices because it was done in a systematic manner over a period of time to the detriment of the
25 Plaintiff and all others similarly situated.

26 120. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
27 unlawful, and harmful to Plaintiff, Class Members, and to the public. Plaintiff seeks to enforce
28 important rights affecting the public interest within the meaning of Code of Civil Procedure §

1 1021.5.

2 121. A violation of California Business & Professions Code § 17200, *et seq.* may be
3 predicated on the violation of any state or federal law. All the acts described herein as violations
4 of, among other things, the California Labor Code and IWC Wage Orders, are unlawful and in
5 violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and
6 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in
7 violation of California Business and Professions Code §§ 17200, *et seq.*

8 122. Plaintiff, individually, and on behalf of the Class Members, have no plain, speedy,
9 and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of
10 Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
11 unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on
12 behalf of the Class Members, have suffered and will continue to suffer irreparable harm unless
13 Defendants are restrained from continuing to engage in said unfair, unlawful and/or fraudulent
14 business practices.

15 123. Plaintiff, individually, and on behalf of the Class Members, are entitled to, and do
16 seek such relief as may be necessary to disgorge the profits which Defendants have acquired, or of
17 which Plaintiff and the Class Members have been deprived, by means of the above-described
18 unfair, unlawful and/or fraudulent business practices. Plaintiff and the Class Members are not
19 obligated to establish individual knowledge of the unfair practices of Defendants to recover
20 restitution.

21 124. Plaintiff, individually, and on behalf of the Class Members, are further entitled to
22 and do seek a declaration that the above-described business practices are unfair, unlawful and/or
23 fraudulent, and injunctive relief restraining Defendants from engaging in any of the above-
24 described unfair, unlawful and/or fraudulent business practices in the future.

25 125. Pursuant to Business & Professions Code §§ 17200, *et seq.*, Plaintiff and Class
26 Members are entitled to restitution of the wages withheld and retained by Defendants during a
27 period that commences four years prior to the filing of this Complaint; a permanent injunction
28 requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of

attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

EIGHT CAUSE OF ACTION

**FOR PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ. FOR VIOLATIONS
OF LABOR CODE as well as IWC Wage Order 1-2001**

Plaintiff and All Aggrieved Employees Against All Defendants

126. Plaintiff, on behalf of themselves and all Aggrieved Employees, re-alleges and incorporate by reference each and every allegation set forth in the preceding paragraphs.

127. Based on the above allegations incorporated by reference, Defendants violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 512, 1194, 1194.2, 1197, 1198, 2802, as well as IWC Wage Order 1-2001.

128. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- \$100 for the initial violation per employee per pay period; and
- \$200 for each subsequent violation per employee per pay period.

These penalties will be allocated 75% to the LWDA and 25% to the affected employees.

129. In addition, and as set forth above, Defendants failed to provide Plaintiff and the Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

130. Further, Plaintiff, as the Aggrieved Employees, need not demonstrate or prove that Defendants' conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful.

1 131. As a result of the acts alleged above, Plaintiff and the Aggrieved Employees seek
2 penalties under Labor Code § 2699, *et seq.* because of Defendants' violations of Labor Code §§ 226
3 and 226.3.

4 132. Pursuant to Labor Code § 2699.3(a), on or about April 14, 2021, Plaintiff gave
5 written notice by certified mail to Defendant All Star Glass, Inc., and to the LWDA of their claims,
6 including the facts and theories supporting all claims outlined in this Class and PAGA Action
7 Complaint. Therefore, once more than sixty-five (65) days have passed since that date, Plaintiff
8 will have fully satisfied the administrative prerequisites to suit under PAGA and this complaint will
9 be deemed amended to include the PAGA allegations enumerated below. Once this occurs, Plaintiff
10 seek to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well
11 as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative
12 action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009)
13 46 Cal. 4th 969.

14 133. Plaintiff is not required to, nor does he seek class certification of the PAGA claims
15 under Code of Civil Procedure § 382.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff, on behalf of himself and the Class Members, prays for judgment
18 against Defendant Mass Brothers, Inc. and each DOE defendant sued herein as DOES 1 through
19 20, inclusive, as follows:

- 20 1. An Order that this action may proceed and be maintained as a class action;
- 21 2. On the First Cause of Action:
- 22 a. A declaratory judgment that Defendants have violated sections 1194,
23 1194.2, and 1197 of the California Labor Code by failing to pay Plaintiff and other Class Members
24 for all of their hours worked during the class period;
- 25 b. An award to Plaintiff and the Class Members in the amount of their unpaid
26 wages owed to them;
- 27 c. An award to Plaintiff and the Class Members for liquidated damages
28 thereto; and

1 d. An award to Plaintiff and the Class Members of their attorneys' fees and
2 costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the
3 California Labor Code and section 1021.5 of the California Code of Civil Procedure.

4 3. On the Second Cause of Action:

5 a. A declaratory judgment that Defendants have violated Labor Code sections
6 510, 1194, 1194.2, 1198, 1199 and Section 3 of as applicable IWC Wage Order(s);

7 b. Pursuant to Labor Code section 510, an award to Plaintiff and the Overtime
8 Subclass Members, for the difference of the proper amount of overtime compensation paid to them
9 in the period from four years prior to the filing of this Complaint; and

10 c. An award of prejudgment interest, attorneys' fees and costs allowed by law;

11 4. On the Third Cause of Action:

12 a. A declaratory judgment that Defendants have violated California Labor
13 Code §§ 512, 226.7 and Section 11 of as applicable IWC Wage Order(s); and

14 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Meal
15 Period Subclass Members for an hour of pay for each day that a Labor Code compliant meal period
16 was not provided in California during the Class Period.

17 5. On the Fourth Cause of Action:

18 a. A declaratory judgment that Defendants have violated California Labor
19 Code § 226.7 and Section 12 of as applicable IWC Wage Order(s); and

20 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Rest
21 Break Subclass Members for an hour of pay for each day that a Labor Code compliant rest period
22 was not provided in California during the Class Period.

23 6. On the Fifth Cause of Action:

24 a. A declaratory judgment that Defendants have violated California Labor
25 Code §§ 201 through 203; and

26 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
27 the Waiting Time Penalty Subclass Members for waiting time penalties in the amount of 30 days
28 wages per Class Member who is no longer employed by Defendants.

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7. On the Sixth Cause of Action:

- a. A declaratory judgment that Defendants have violated Labor Code section 226, by issuing inaccurate and/or incomplete wage statements that failed to include the gross wages earned, the total hours worked, the net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each applicable hourly rate to Plaintiff and the Wage Statement Subclass Members; and
- b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each initial pay period in which a violation of Labor Code section 226 occurred and \$100 for each subsequent pay period in which a violation of Labor Code section 226 occurred, not to exceed \$4,000 for each Class Member, as well as an award of costs and reasonable attorney’s fees, pursuant to Labor Code section 226(e).

8. On the Seventh Cause of Action:

- a. That the Court finds and declares that Defendants have violated the UCL and committed unfair and unlawful business practices by failing to pay Plaintiff and other Class Members for all of their hours worked at the applicable rates, by failing to pay missed meal and rest period premiums; by failing to reimburse Plaintiff and other Class Members for business expenses incurred on behalf of Defendants; and
- b. Restitution, including, but not limited to, the relief permitted by the California Labor Code (*i.e.*, meal period premiums and rest period premiums) to the Class Members during the Class Period.

10. On the Eight Cause of Action:

- a. A civil penalty against Defendants in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and for each of the Aggrieved Employees during all of the pay periods in the PAGA Period;
- b. All penalties available under Section 226.3 of the California Labor Code and the Labor Code Private Attorneys General Act of 2004;

1 c. An award of reasonable attorneys' fees against Defendants as specified in
2 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with
3 the PAGA claims;

4 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
5 connection with Plaintiff' and Aggrieved Employees' PAGA claim against Defendants as provided
6 for in Labor Code § 2699(g)(1); and

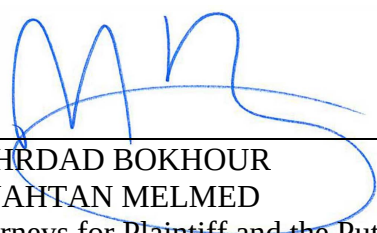
7 11. All other relief as this Court deems proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demand a jury trial of the Class Members' claims against Defendants.

10 Dated: April 14, 2021

11 BOKHOUR LAW GROUP, P.C.
12 MELMED LAW GROUP, PC

13 BY: 

14 MEHRDAD BOKHOUR
15 JONAHTAN MELMED
16 Attorneys for Plaintiff and the Putative Class
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