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Superior Court of California,
Sacramento
08/02/2023
blox50v
By _____, Deputy
23CV005916

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

STEFAN MAYERS, on a behalf of limited
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

NOR-CAL BEVERAGE CO., INC., a
California corporation, and DOES 1 through
100, inclusive;

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATION OF LABOR CODE
§ 2698 et seq. (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

BY FAX

Plaintiff Stefan Mayers (“Plaintiff”) hereby submits his *limited representative PAGA Complaint*¹ against Defendant Nor-Cal Beverage Co., Inc., and DOES 1 through 100, inclusive; (collectively, “Defendants”), on behalf of himself and other current and former aggrieved employees of Defendants for penalties as follows:

INTRODUCTION

1. This representative action brought pursuant to Labor Code § 2698 *et seq.* (the Private Attorneys General Act of 2004 (“PAGA”)) for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

2. This Complaint challenges Defendants’ systemic illegal employment practices resulting in violations of the stated provisions of the Labor Code against the identified group of employees.

3. Plaintiff is informed and believes and thereon alleges that Defendants jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in (1) failing to pay all meal period wages and rest

¹ Plaintiff Stefan Mayers’ Complaint limits his PAGA representation to aggrieved employees from April 9, 2020, to July 19, 2020, for the reasons stated below. On April 9, 2021, Plaintiff Stefan Mayers gave written notice to the LWDA of his claims for violations of various labor codes against Defendant Nor-Cal Beverages Co., Inc. (“Nor-Cal”). (Attached hereto as **Exhibit 1**.) On June 22, 2021, Plaintiff Mayers filed his PAGA Complaint against Defendant Nor-Cal in Gordon D. Schaber Sacramento County Courthouse. (See *Stefan Mayers v. Nor-Cal Beverages Co., Inc.*, Case No. 34-2021-00303062-CU-OE-GDS.)

On July 20, 2021, *more than three (3) months after* Plaintiff Mayers’ written notice, Plaintiff Ricardo Ocampo gave written notice to the LWDA of his claims against Defendant Nor-Cal violations of various labor codes. (See **Exhibit 2** (Plaintiff Ocampo’s Complaint, Tenth (10th) Cause of Action – Violations of the Private Attorney Generals Act of 2004, paragraphs 123 through 128).) On October 13, 2021, *approximately four (4) months later*, Plaintiff Ocampo filed his Complaint in the County of Orange against Defendant Nor-Cal. (See *Ocampo v. Nor-Cal Beverages Co. Inc.*, Case No. 30-2021-01226713-CU-OE-CXC and **Exhibit 2**.) On October 31, 2022, this Court granted Defendant Nor-Cal’s Motion to Compel Arbitration and *dismissed Plaintiff Mayers’ representative PAGA action*. (Attached hereto as **Exhibit 3** (order dismissing Plaintiff Mayers’ representative PAGA action).)

On July 17, 2023, William Wilkinson, Counsel for Plaintiff/Petitioner Andrew Mapes, filed a Petition for Coordination with the Judicial Council of the State of California seeking to coordinate *Ocampo v. Nor-Cal Beverages Co. Inc.*, Case No. 30-2021-01226713-CU-OE-CXC pending in the Orange County Superior Court, and *Mapes v. Nor-Cal Beverages Co., Inc. et al.*, Case No. CV2022-1075 pending in the Yolo County Superior Court, pursuant to California Code of Civil Procedure sections 404 and 404.5, and California Rules of Court 3.500 *et seq.* The said Petition is currently pending review by the Judicial Council. (See **Exhibit 4** (Petitioner Andrew Mapes’ Petition for Coordination and Application for immediate Stay).)

The *Ocampo* Complaint is a Class Action and PAGA mix, whereas the *Mapes* Complaint is a Class Action only. The instant Action is PAGA only. Due to the overlapping PAGA period in the *Ocampo* Action and the instant PAGA Action, Plaintiff Mayers files his Complaint on a limited PAGA representation from April 9, 2020, to July 19, 2020.

1 break wages, (2) failing to properly calculate and pay all minimum and overtime wages, (3)
2 failing to provide accurate wage statements, (4) failing to pay all wages due and owing during
3 employment and upon termination of employment, and (5) failing to reimburse all necessary
4 business expenses.

5 **JURISDICTION AND VENUE**

6 **4.** This action is brought pursuant to PAGA. The civil penalties sought by
7 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
8 according to proof at trial.

9 **5.** This Court has jurisdiction over this action pursuant to California
10 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
11 causes except those given by statute to other courts. The statutes under which this action is
12 brought do not specify any other basis for jurisdiction.

13
14 **6.** This Court has jurisdiction over the violations of PAGA and Labor Code
15 §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,
16 1197.1, 1198, 2800 and 2802.

17 **7.** This Court has jurisdiction over all Defendants because, upon
18 information and belief, each party has sufficient minimum contacts in California, or otherwise
19 intentionally avails itself of California law so as to render the exercise of jurisdiction over it by
20 the California courts consistent with traditional notions of fair play and substantial justice.

21 **8.** Venue is proper in this Court because, upon information and belief, the
22 named Defendants transact business and/or have offices in this county, and the acts and
23 omissions alleged herein took place in this county. Moreover, this action is brought on behalf
24 of the State of California as a private attorney general and has jurisdiction in this venue.

25 **PARTIES**

26 **9.** Plaintiff Stefan Mayers is an individual residing in the State of
27 California. Plaintiff was employed by Defendants within the statutory time period.

28 **10.** Plaintiff is informed and believes and thereon alleges that Defendants

are licensed to do business and actually doing business in the State of California, including the County of Sacramento.

11. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend the complaint when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiff and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

12. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

13. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to PAGA and Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

CAUSE OF ACTION

VIOLATION OF PAGA

(AGAINST ALL DEFENDANTS BY PLAINTIFF)

14. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 13 as though fully set forth herein.

15. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of

its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

16. On April 9, 2021, Plaintiff Mayers provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the written notice to the LWDA. Plaintiff believes that on or about June 14, 2021, the sixty-five (65) day notice period expired, and the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff has exhausted his administrative remedies.

17. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former employees (whether hired directly or through a staffing agency) of Defendants who worked for Defendants at any time during the *limited period from April 9, 2020 to the July 19, 2020*,² and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

18. At all times relevant herein, Defendants were required to compensate their non-exempt employees minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

19. As a policy and practice, Defendants failed to compensate Plaintiff and other aggrieved current and former employees for all hours worked, resulting in a failure to pay all minimum wages and overtime wages, where applicable.

Failure to Provide Meal Periods and Rest Breaks

20. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants were required to authorize and permit their non-exempt employees to take a 10-

² See footnote 1.

1 minute rest break for every four (4) hours worked or major fraction thereof, and were further
2 required to provide their non-exempt employees with a 30-minute meal period for every five
3 (5) hours worked.

4 **21.** As a policy and practice, Defendants failed to provide Plaintiff and other
5 aggrieved current and former employees with legally-mandated meal periods and rest breaks
6 and failed to pay proper compensation for this failure.

7 **Failure to Timely Pay Wages During Employment**

8 **22.** At all times relevant herein, Defendants were required to pay their
9 employees within a specified time period pursuant to the mandate of Labor Code § 204.

10 **23.** As a policy and practice, Defendants failed to pay Plaintiff and other
11 aggrieved current and former employees all wages due and owing them within the required
12 time period.

13 **Failure to Timely Pay Wages Upon Termination**

14 **24.** At all times relevant herein, Defendants were required to pay their
15 employees all wages owed in a timely fashion at the end of employment pursuant to California
16 Labor Code §§ 201 to 204.

17 **25.** As a result of Defendants' Labor Code violations alleged above,
18 Defendants failed to pay Plaintiff and the other aggrieved former employees their final wages
19 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
20 Labor Code § 203.

21 **Failure to Provide Complete and Accurate Wage Statements**

22 **26.** At all times relevant herein, Defendants were required to keep *accurate*
23 records regarding their California employees pursuant to the mandate of Labor Code §§ 226
24 and 1174.

25 **27.** As a result of Defendants' various Labor Code violations, Defendants
26 failed to keep accurate records regarding Plaintiff and other aggrieved current and former
27 employees. For example, Defendants failed in their affirmative obligation to keep accurate
28 records regarding Plaintiff and other aggrieved current and former employees' gross wages

1 earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates
2 and the number of hours worked at each hourly rate.

3 **Failure to Provide Paid Sick Days**

4 **28.** At all times relevant herein, Defendants were required to provide their
5 employees with paid sick days pursuant to Labor Code § 246.

6 **29.** As a policy and practice, Defendants failed to provide Plaintiff and other
7 aggrieved current and former employees with paid sick days pursuant to Labor Code § 246.

8 **Failure to Reimburse Business Expenses**

9 **30.** At all times relevant herein, Defendants were required to reimburse their
10 employees for any and all necessary expenditures or losses incurred by the employees in direct
11 consequences of the discharge or their duties pursuant to the mandate of Labor Code §§ 2800
12 and 2802.

13 **31.** As a policy and practice, Defendants failed to pay Plaintiff and other
14 aggrieved current and former employees all business expenses incurred and owing them within
15 the required time period.

16 **Penalties**

17 **32.** Pursuant to California Labor Code § 2699, Plaintiff, individually, and on
18 behalf of other current and former aggrieved employees, requests and is entitled to recover
19 from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant,
20 including but not limited to:

21 **33.** Penalties under California Labor Code § 2699 in the amount of a
22 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and
23 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
24 violation;

25 **34.** Penalties under California Code of Regulations Title 8 § 11040 in the
26 amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial
27 violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each
28 subsequent violation;

1 **35.** Penalties under California Labor Code § 210 in addition to, and entirely
2 independent and apart from, any other penalty provided in the California Labor Code in the
3 amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial
4 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
5 subsequent violation;

6 **36.** Penalties under Labor Code § 1197.1 in the amount of a hundred dollars
7 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
8 fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

9 **37.** Any and all additional penalties as provided by the Labor Code and/or
10 other statutes; and

11 **38.** Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and
12 2699, and any other applicable statute.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on his own behalf as an individual and as a
3 representative of other current and former aggrieved employees pursuant to PAGA, prays for
4 judgment as follows:

- 5 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in
6 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201,
7 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d),
8 1194, 1197, 1197.1, 1198, 2800 and 2802.
- 9 2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code
10 §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and
- 11 3. For such other and further relief the court may deem just and proper.
- 12

13 Dated: August 1, 2023

JUSTICE LAW CORPORATION

14
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16 By: 

Douglas Han
Shunt Tatavos-Gharajeh
Brian Jeong
Attorneys for Plaintiff

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EXHIBIT 1

April 9, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: NOR-CAL BEVERAGE CO., INC.

Dear Representative:

We have been retained to represent Stefan Mayers against Nor-Cal Beverage Co., Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "NOR-CAL").

Mr. Mayers is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Mayers may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Nor-Cal Beverage Co., Inc. is a California corporation located at 2150 Stone Blvd., Sacramento, California 95691.

NOR-CAL employed Mr. Mayers as an hourly-paid non-exempt Machine Operator within one year of the date of this letter (until in or around June of 2020²) in the State of California. American Labor Pool, Inc. placed Mr. Mayers at Nor-Cal Beverage Co., Inc. NOR-CAL directly controlled the wages, hours and working conditions of Mr. Mayers and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

¹ Mr. Mayers does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Mayers will amend this notice when the true names and capacities are known. Mr. Mayers is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Mayers and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Mayers' PAGA cause of action is tolled.

The “aggrieved employees” that Mr. Mayers may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies) of NOR-CAL within the State of California.

NOR-CAL failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Mayers has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at NOR-CAL, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

NOR-CAL has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Mayers and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. NOR-CAL failed to compensate aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. NOR-CAL also failed to include non-discretionary bonuses and incentives in aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, NOR-CAL failed to pay Mr. Mayers and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, NOR-CAL routinely required Mr. Mayers and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with NOR-CAL's policies and expectations and meet time sensitive deadlines. Additionally, NOR-CAL failed to provide coverage to Mr. Mayers and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, NOR-CAL failed to authorize and permit Mr. Mayers and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, NOR-CAL failed to compensate Mr. Mayers and other aggrieved employees all the premium wages they were owed.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, NOR-CAL failed to pay Mr. Mayers and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, NOR-CAL failed to pay Mr. Mayers and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, NOR-CAL did not provide Mr. Mayers and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from NOR-CAL were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Mayers and other aggrieved employees, (2) total hours worked by Mr. Mayers and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Mayers and other aggrieved employees (4) all deductions for Mr. Mayers and other aggrieved employees, (5) net wages earned by Mr. Mayers and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Mayers and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Mayers and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Mayers and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, NOR-CAL failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Mayers and other aggrieved employees.

LWDA

April 9, 2021

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, NOR-CAL did not provide aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Mayers and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by NOR-CAL, including for purchasing personal protective equipment (like boots) they needed to perform their jobs and using their personal cellular phones to communicate with management.

We believe that Mr. Mayers and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Mayers will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of NOR-CAL within one year of the date of this letter, as allowed by law.

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LWDA
April 9, 2021
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If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Shannon Deary-Bell
c/o Nor-Cal Beverage Co., Inc.
2286 Stone Blvd.
Sacramento, California 95691
Agent for Service of Process for Nor-Cal Beverage Co., Inc.

EXHIBIT 2

POTTER HANDY LLP

Mark D. Potter (SBN 166317)

mark@potterhandy.com

James M. Treglio (SBN 228077)

jimt@potterhandy.com

8033 Linda Vista Rd, Suite 200

San Diego, CA 92111

(858) 375-7385

Fax: (888) 422-5191

Assigned for all Purposes

C-16

Attorneys for Plaintiff and the Putative Class

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

RICARDO ALEXANDER OCAMPO,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

NOR-CAL BEVERAGE CO., INC., a
California corporation with its principal place
of business in California, and DOES 1 to 100,
inclusive

Defendants.

CASE NO:

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR**

**(1) FAILURE TO PAY ALL WAGES OWED
(LABOR CODE §§ 1194, 1194.2, 1198, AND
WAGE ORDER NO. 1);**

**(2) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§ 510,
1194, 1194.2, 1198, AND WAGE ORDER NO.
1)**

**(3) FAILURE TO PROVIDE MEAL
PERIODS AND PAY MISSED MEAL
PERIOD PREMIUMS (LABOR CODE §§
226.7, 512, IWC WAGE ORDER NO. 1);**

**(4) FAILURE TO PROVIDE PAID REST
BREAKS AND PAY MISSED REST BREAK
PREMIUMS (LABOR CODE §§ 226.7; IWC
WAGE ORDER NO. 1);**

**(5) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS (LABOR CODE §
226 AND 226.3);**

**(6) FAILURE TO PAY ALL WAGES OWED
IN A TIMELY MANNER (LABOR CODE
§204);**

**(7) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);**

**(8) FAILURE TO PROVIDE A DAY OF
REST (LABOR CODE §§ 551 AND 552);**

**(9) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2699, et seq., and 558)**

AND

(10) UNFAIR COMPETITION IN

**VIOLATION OF CALIFORNIA BUSINESS
& PROFESSIONS CODE §17200, ET SEQ.**

DEMAND FOR JURY TRIAL

Plaintiff Ricardo Alexander Ocampo (“Plaintiff”), on behalf of himself, the State of California, and all others similarly situated (hereinafter “Class Members”) complains and alleges as follows:

OVERVIEW OF CLAIMS

1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action, as a representative action pursuant to the Labor Code and on behalf of the California general public, against Defendants Nor-Cal Beverage Co., Inc. (“Nor-Cal”) and DOES 1 to 100 (collectively “Defendants”) for their (1) failure to pay Plaintiff and his fellow employees in California all wages owed; (2) failure to pay Plaintiff and his fellow employees in California all overtime wages owed; (3) failure to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; (4) failure to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; (5) failure to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; (6) failure to pay all wages owed in a timely manner; (7) failure to pay all wages due to former employees based on the foregoing; (8) failure to provide a day of rest; (9) violation of PAGA; and (9) unfair business practices based on the foregoing. As a result of the foregoing, Defendants have violated California statutory laws as described below.

2. The “Class Period” is designated as the period from four years prior to the filing of this Complaint through the trial date. Defendants’ violations of California’s wage and hour laws and unfair competition laws, as described more fully below, have been ongoing throughout the Class Period.

VENUE

3. Venue is proper in this county under section 395.5 of the California Code of Civil Procedure. Many, if not all, of the putative Class Members were employed and/or performed work

1 during the Class Period by Defendants in Orange County. Many of the acts alleged herein
2 including Defendant's failure to pay all wages and overtime wages owed, failure to provide Labor
3 Code complaint paid meal and rest periods and pay missed meal period and rest break premiums,
4 and failure to provide a rest day, occurred in Orange County. Venue is therefore proper in Orange
5 County.

6 7 **JURISDICTION**

8 4. Defendants are within the jurisdiction of this Court. Defendants transact millions of
9 dollars as an independent beverage co-packer throughout the State of California, including in the
10 County of Orange. Thus, Defendants have obtained the benefits of the laws of the State of
11 California. In addition, Plaintiff asserts no claims arising under federal law. Rather, Plaintiff
12 brings causes of action based solely on, and arising from, California law. The claims of the Class
13 are also based solely on California law described herein.

14 5. Further, this action is not amenable to federal jurisdiction pursuant to 28 U.S.C.
15 §1332, as (1) more than two-thirds of the members of the Class as defined below are citizens of the
16 state of California,(2) the defendants from whom significant relief is sought (Nor-Cal Beverage
17 Co., Inc.), whose alleged conduct forms a significant basis for the claims asserted by the Class, has
18 its principal office in the state of California, and (3) the principal injuries resulting from the
19 conduct alleged herein incurred in the state of California.

20 21 **THE PARTIES**

22 **A. The Plaintiff**

23 6. Plaintiff is a California resident and, from January 13, 2021 through April 15, 2021,
24 was employed by Defendants as a Filler Machine Operator II in California. At all relevant times,
25 Plaintiff was hired to provide machine operation services for Defendants. At all relevant times
26 through the present, and on-going, Defendants' employees, including Plaintiff during his and their
27 employment, were not paid by Defendants for all wages and overtime wages owed; did not receive
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1 premium payments for having been provided only unpaid rest periods; were not provided timely
2 duty free meal breaks or paid missed meal break premiums; were not provided accurate and/or
3 complete wage statements; were not paid all wages owed within seven days of the close of payroll;
4 did not receive all of their wages due upon termination of employment; and were not provided a
5 day of rest.

6 7. Plaintiff seeks to represent the following classes:

7 (a) all individuals who are or were employed by Defendant or its predecessor or
8 merged entities in California as hourly, non-exempt employees, who worked for shifts over
9 10 hours and were not provided with second meal periods during the Class Period (“meal
10 period class members”);

11 (b) all individuals who are or were employed by Defendant or its predecessor or
12 merged entities in California as hourly, non-exempt employees, who worked shifts in
13 excess of three and a half hours during the Class Period (“rest period class members”);

14 (c) all individuals who are or were employed by Defendant, or its predecessor or
15 merged entities in California as hourly, non-exempt employees, who work or worked in
16 excess of eight hours in a day or forty hours in a workweek during the Class Period
17 (“overtime class members”);

18 (d) all individuals who are or were employed by Defendant, or its predecessor or
19 merged entities in California as hourly, non-exempt employees during the Class Period
20 (“wage statement class members”); and

21 (e) all individuals who are or were employed by Defendant, or its predecessor or
22 merged entities in California as hourly, non-exempt employees who were not provided rest
23 days during the Class Period (“rest day class members”).

24 (collectively referred to as “Class Members” and/or the “Class”);

25 **B. The Defendants**

26 8. Defendant Nor-Cal Beverage Co., Inc., is a California corporation headquartered in
27 West Sacramento, California. Defendant Nor-Cal is a company that boasts of being the largest
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1 independent beverage co-packer west of the Mississippi and a highly-respected equipment
2 solutions provider. To provide its services, Defendant employs machine operators, such as the
3 Plaintiff and the Class Members.

4 9. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
6 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
7 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
8 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
9 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
10 capacities of the Defendants designated hereinafter as DOES when such identities become known.

11 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
12 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
13 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
14 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
15 employer and/or joint employer of Plaintiff and the Class Members.

16 11. California courts have recognized that the definition of “employer” for purposes of
17 enforcement of the California Labor Code goes beyond the concept of traditional employment to
18 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
19 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
20 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
21 person to work or exercises control over the wages, hours, or working conditions of any person,
22 may be liable for violations of the California Labor Code as to that person. Cal. Labor Code §§558
23 and 558.1.

24 12. California law also permits and recognizes the piercing of a corporate veil between
25 sister companies and under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th
26 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise rule
27 applies where “there are two or more personalities, there is but one enterprise; and that this
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1 enterprise has been so handled that it should respond, as a whole, for the debts of certain
2 component elements of it.” *Hasso* 227 Cal. App. 4th at 155; *Greenspan*, 191 Cal. App. 4th at 512.

4 **FACTUAL ALLEGATIONS**

5 13. Plaintiff and the Class Members are and were employed by Nor-Cal Beverage Co.,
6 Inc., a company that boasts of being the largest independent beverage co-packer west of the
7 Mississippi and a highly-respected equipment solutions provider.

8 14. Plaintiff was hired as a Filler Machine Operator II assigned to Defendant’s
9 production facility in West Sacramento on January 13, 2021 until he resigned on April 15, 2021.
10 Defendant paid Plaintiff \$18.58 per hour.

11 15. Like all Class Members, Plaintiff was not provided with a second meal period even
12 if he worked for shifts over 10 hours.

13 16. In addition, Plaintiff and the Class Members were only given two 15-minute breaks
14 although they worked for at least 12 hours daily. In most instances, the breaks were taken late or
15 not given at all.

16 17. When Plaintiff joined the company, Defendant informed him that he will be paid
17 overtime for work rendered beyond 40 hours per week. Although Plaintiff worked for at least 60
18 hours every week, he was not paid for his overtime work. Plaintiff would be paid for around four
19 hours of overtime on some weeks and none at all on most weeks.

20 18. Finally, in many instances, Plaintiff and the Class Members were made to work
21 seven consecutive days without being given any rest days.

22 19. Labor Code § 1197 states the California requirement that employees must be paid at
23 least the minimum wage fixed by the Commission, and any payment of less than the minimum
24 wage is unlawful.

25 20. Labor Code § 1194 entitles “any employee receiving less than the legal minimum
26 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.”

27 21. IWC Wage Order 1-2001 § 4 also obligates employers to pay each employee
28

1 minimum wages for all hours worked.

2 22. As noted above, Plaintiff and the Class Members were only compensated for 40
3 hours of work each week, even if they worked for at least 60 hours weekly. While they would be
4 paid for a few hours of overtime on some weeks, no overtime was paid on most weeks.

5 23. Plaintiff and the Class Members were also not provided with second meal periods
6 and additional rest breaks even if they worked for at least 12 hours daily. In most instances, the
7 breaks were taken late or not given at all. As a result, Plaintiff and the Class Members are not
8 compensated for all hours worked.

9 24. In 2018, the California Supreme Court held in *Troester v. Starbucks, Inc.* (2018) 5
10 Cal.5th 829, that an employee must be compensated for any time in which they are under the
11 control of their employer, and performing work, even if that amount of time, as here, is limited to a
12 few minutes per day. Thus, by not compensating Plaintiff and the Class Members for the time
13 spent working beyond 40 hours per week and by not providing Plaintiff and the Class Members
14 with second meal periods and additional rest breaks even if they worked for at least 12 hours every
15 day, Defendant has violated the Labor Code and the Wage Order.

16 25. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
17 damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the Class
18 Members are not paid for all hours worked under Labor Code § 1194, the employee may recover
19 minimum wages for the time associated with the overtime for which they received no
20 compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891
21 [holding that employees suing for failure to pay overtime could recover liquidated damages under
22 § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's*
23 *Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at
24 *20-21.) Since Defendant failed to provide Plaintiff and all Class Members with compensation for
25 all hours worked, including overtime hours, each are entitled to recover liquidated damages under
26 Labor Code § 1194.2. Based upon these same factual allegations, Plaintiff also seeks penalties on
27 behalf of all Class Members penalties under Labor Code § 1199.

1 26. Labor Code § 512 requires employers to provide employees with thirty (30) minute
2 uninterrupted and duty-free meal period within the first five hours of work. “An on-duty meal
3 period is permitted only when the nature of the work prevents an employee from being relieved of
4 all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut*
5 *Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing
6 the employee to revoke it at any time. *Id.*

7 27. Generally, the DLSE and courts have “found that the nature of the work exception
8 applies: ‘(1) where the work has some particular external force that requires the employee to be on
9 duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at
10 p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is
11 the employer’s obligation to determine whether the nature of the work prevents an employee from
12 being relieved before requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal.
13 App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who
14 requested on-duty meal periods determined that the nature of the work prevented officers from
15 being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.)

16 28. As with rest periods, under Labor Code § 512, if an employer maintains a uniform
17 policy that does not authorize and permit the amount of meal time called for under the law (as
18 specified in the applicable Wage Order), “it has violated the wage order and is liable.” The
19 Brinker Court explained in the context of rest breaks that employer liability attaches from adopting
20 an unlawful policy:

21 An employer is required to authorize and permit the amount of rest break
22 time called for under the wage order for its industry. If it does not—if, for
23 example, it adopts a uniform policy authorizing and permitting only one
24 rest break for employees working a seven-hour shift when two are
25 required—***it has violated the wage order and is liable.*** *Brinker Rest.*
Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

26 29. As a result of its meal period policies of not providing second meal periods even if
27 Plaintiff and the Class Members work for shifts over 10 hours each day, Defendant violated Labor
28 Code § 512 and IWC Wage Order No. 1 by failing to provide second duty-free meal periods to
Plaintiff and the Class Members of 30 minutes or more.

1 30. Thus, Defendant unlawfully retained control of Plaintiff and the Class Members
2 during their meal periods, even though the nature of the work did not necessitate an on-duty meal
3 period (and by failing to enter into proper on-duty meal period agreements). See *Augustus v. ABM*
4 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that on-premises breaks violate
5 California law). As a result of Defendant's failure to authorize or permit lawful meal periods,
6 Plaintiff and the Class Members did not receive second meal periods even if they worked for more
7 than 10 hours per day. Defendant also failed to pay Plaintiff and the meal period class members
8 meal period premiums for each workday that the employees did not receive a compliant second
9 meal period.

10 31. Labor Code § 226.7 provides "an employer shall not require an employee to work
11 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
12 regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, IWC
13 Wage Order 1-2001 prohibits an employer from "employ[ing] any person for a work period of
14 more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 1-
15 2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay
16 at the employee's regular rate of compensation for each workday that the meal period is not
17 provided. Accordingly, for each day that Plaintiff and the Class Members did not receive
18 compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code
19 § 226.7 and Wage Order 1-2001.

20 32. Pursuant to Labor Code § 226.7, and Wage Order 1-2001, Defendant failed to
21 provide Plaintiff and the Class Members with duty-free rest periods of not less than ten (10)
22 minutes for every major fraction of four hours worked.

23 33. Labor Code § 226. 7 provides "an employer shall not require an employee to work
24 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
25 regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Under IWC Wage
26 Order 1-2001 an employer must authorize and permit all employees to take ten (10) minute duty
27 free rest periods for every major fraction of four hours worked.

1 34. Defendant failed to implement a lawful rest period policy that informed Plaintiff and
2 the Class Members of their right to receive lawful rest periods for shifts greater than 3.5 hours.
3 Although Plaintiff and the Class Members worked for at least 12 hours per day, Defendant only
4 provided them with two (2) 15-minute breaks. In most instances, the breaks were taken late or not
5 given at all. To the extent that Plaintiff and the rest period class members could stop work during
6 their shifts, they were nonetheless on-call, and were not provided with duty-free rest periods. See
7 *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016) (holding that on-duty rest breaks
8 violate California law).

9 35. Pursuant to Labor Code § 226.7 and Wage Order 1-2001, Defendant failed to
10 provide Plaintiff and the Class Members with duty-free rest periods of not less than ten (10)
11 minutes for every major fraction of four (4) hours worked.

12 36. The Brinker Court explained in the context of rest breaks that employer liability
13 attaches from adopting an unlawful policy:

14 An employer is required to authorize and permit the amount of rest break
15 time called for under the wage order for its industry. If it does not-if, for
16 example, it adopts a uniform policy authorizing and permitting only one
17 rest break for employees working a seven-hour shift when two are
18 required-***it has violated the wage order and is liable.*** *Brinker Rest. Corp.*
v. Sup. Ct., supra, 53 Cal.4th at 1033. (Emphasis added.)

18 37. Since Defendant did not offer employees the opportunity to receive a compliant off-
19 duty ten minute rest periods, "the court may not conclude employees voluntarily chose to skip ...
20 breaks." *Alberts v. Aurora Behavioral Health Care*, (2015) 241 Cal. App. 4th 388, 410 ("[i]f an
21 employer fails to provide legally compliant meal or rest breaks, the court may not conclude
22 employees voluntarily chose to skip those breaks."); accord *Brinker Rest. Corp. v. Sup. Ct.*, supra,
23 53 Cal.4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but
24 never authorized; if a break is not authorized, an employee has no opportunity to decline to take
25 it.").

26 38. Even an employer who maintains an otherwise compliant rest period policy,
27 "reminded their employees of their availability-and the importance-of taking breaks on a daily
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1 basis, and even went so far as to conduct regular audits to ensure that employees were being offered
2 rest breaks" will still be liable for rest period violations if the employees were not separately or
3 properly compensated for the non-productive time associated with rest periods under a piece-rate
4 compensation system. *Amaro v. Gerawan Farming, Inc.*, 2016 U.S. Dist. LEXIS 66842 * (E.D. Cal.
5 May 19, 2016) aff'd *Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL 4440966, at *
6 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. (9th Cir. Nov. 16, 2016).

7 39. In addition, Plaintiff and the Class Members were not compensated with one (1)
8 hours' worth of pay at their regular rate of compensation when they were not provided with a
9 compliant rest period.

10 40. Labor Code § 510 requires an employer to compensate an employee who works
11 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
12 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
13 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
14 employees at no less than twice the regular rate of pay when an employee works more than twelve
15 (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In
16 accordance with Labor Code § 1194, Plaintiff and the overtime class members could not then
17 agree and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code
18 §§ 510 and 1194.

19 41. For the reasons stated above, Plaintiff and the overtime class members worked
20 certain hours for which they were not paid. Plaintiff and the overtime class members had to work
21 beyond 40 hours each week. This time amounts and amounted to at least 20 hours per week.
22 Because Plaintiff and the Class Members spent eight hours or more working on "compensated"
23 time, this uncompensated time for work done beyond eight hours each day and the lack of second
24 meal periods and additional rest breaks should have been compensated at the overtime rate.
25 Instead, no compensation was paid at all, in violation of Cal. Labor Code §§ 510, 1194, and Wage
26 Order 1-2001. Plaintiff is an aggrieved employee for purposes of seeking penalties under PAGA.

27 42. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in
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1 any employment are due and payable twice during each calendar month, on days designated in
2 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
3 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
4 payroll if the wages are paid not more than seven calendar days following the close of the payroll
5 period.

6 43. Due to Defendant’s failure to pay Plaintiff and the Class Members for all rest and
7 meal period premiums, all hours worked, and overtime, Defendant failed to timely pay the Class
8 Members within seven (7) days of the close of the payroll period in accordance with Labor Code §
9 204 on a regular and consistent basis. See *Parson v. Golden State FC, LLC*, 2016 U.S. Dist.
10 LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after Ling that a
11 failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

12 44. Labor Code § 210 provides that “in addition to, an entirely independent and apart
13 from, any other penalty provided in this article, every person who fails to pay the wages of each
14 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
15 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for each
16 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
17 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
18 faulty compensation policies and practices described in detail above, Plaintiff and the Class
19 Members are entitled to recover penalties under Labor Code § 210.

20 45. As a result of Defendant’s failure to pay wages to Plaintiff and the Class Members,
21 for all hours worked, overtime wages, meal period minimum wages, and meal/rest period
22 premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides “if an employer
23 willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of
24 the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v.*
25 *Barca*, (1998) 68 Cal.App.4th 487, 492.

26 46. Due to Defendant’s faulty policies described above, all Class Members whose
27 employment with Defendant concluded were not compensated at the appropriate rate.
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1 Additionally, Defendant has failed to pay all Class Members for all hours worked, overtime wages,
2 meal period premiums, and rest period premiums, whose sums were certain, at the time of
3 termination or within seventy-two (72) hours of their resignation and have failed to pay those sums
4 for thirty (30) days thereafter.

5 47. As to Plaintiff and all Class Members, Defendants also failed to provide accurate
6 itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 9). Labor Code § 226
7 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
8 statement in writing showing:

- 9 (1) gross wages earned;
10 (2) total hours worked by the employee;
11 (3) the number of piece-rate units earned and any applicable piece rate if
12 the employee is paid on a piece rate;
13 (4) all deductions, provided that all deductions made on written orders of
14 the employee may be aggregated and shown as one item;
15 (5) net wages earned;
16 (6) the inclusive dates of the period for which the employee is paid;
17 (7) the name of the employee and only the last four digits of his or her
18 social security number or an employee identification number other than a
19 social security number;
20 (8) the name and address of the legal entity that is the employer...;
21 (9) all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the
23 employee...

24 48. Similarly, Labor Code § 226(e) provides:

25 (e) (1) An employee suffering injury as a result of a knowing and
26 intentional failure by an employer to comply with subdivision (a) is
27 entitled to recover the greater of all actual damages or fifty dollars (\$50)
28 for the initial pay period in which a violation occurs and one hundred
dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this
subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this
subdivision if the employer fails to provide accurate and complete
information as required by any one or more of items (1) to (9), inclusive,
of subdivision (a) and the employee cannot promptly and easily determine
from the wage statement alone one or more of the following:

- (i) The amount of the gross wages or net wages paid to the
employee during the pay period or any of the other information

1 required to be provided on the itemized wage statement pursuant to
2 items (2) to (4), inclusive, (6), and (9) of subdivision (a).

3 (ii) Which deductions the employer made from gross wages to
4 determine the net wages paid to the employee during the pay
5 period. Nothing in this subdivision alters the ability of the
6 employer to aggregate deductions consistent with the requirements
7 of item (4) of subdivision (a).

8 (iii) The name and address of the employer and, if the employer is
9 a farm labor contractor, as defined in subdivision (b) of Section
10 1682, the name and address of the legal entity that secured the
11 services of the employer during the pay period.

12 (iv) The name of the employee and only the last four digits of his
13 or her social security number or an employee identification number
14 other than a social security number.

15 49. Due to Defendant's failure to provide Plaintiff and the Class Members lawful meal
16 and rest periods (and pay missed rest period premiums), the wage statements issued by Defendant
17 do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct
18 net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and
19 the corresponding number of hours worked at each hourly rate in violation of Labor Code §
20 226(a)(1), (2), (5) and (9).

21 50. Thus, Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect
22 to Plaintiff and the Class Members.

23 51. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
24 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
25 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
26 each violation in a subsequent citation, for which the employer fails to provide the employee a
27 wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As
28 explained in detail above, Defendant failed to provide Plaintiff and the Class Members with
accurate itemized wage statements. Accordingly, Plaintiff and the Class Members may also recover
Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a). See *Finder v.*
Leprino Foods Co. (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at
*7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA
claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D.

1 Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated
2 by § 226(a) may trigger civil penalties.”).

3 52. Further, Defendant failed to provide Plaintiff and the Class Members rest days in
4 accordance with Labor Code §§ 551 and 552, which provide as follows:

5 551. Every person employed in any occupation of labor is entitled to one day’s
6 rest therefrom in seven.

7 552. No employer of labor shall cause his employees to work more than six days
8 in seven.

9 53. Despite these requirements under the law, Defendant made Plaintiff and the Class
10 Members work for seven consecutive days on several workweeks without providing them with rest
11 days, in violation of Labor Code §§ 551 and 552. *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074,
12 1083 (2017). Further, Plaintiff and the Class Members do not fall within any exception to Labor
13 Code §§ 551 and 552. They are not part-time employees as defined by Labor Code §556, as each
14 works in excess of 30 hours in a workweek, and more than 6 hours in any one day of that
15 workweek. Further, the nature of the work does not fit within any of the exceptions illuminated in
16 Labor Code § 554, nor does it necessarily create a need to work more than seven consecutive days.
17 As a result, Defendant has violated Labor Code §§ 551 and 552.

18 19 **CLASS ACTION ALLEGATIONS**

20 54. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
21 a class action pursuant to Code of Civil Procedure § 382.

22 55. Plaintiff seeks to represent the following classes:

23 (a) all individuals who are or were employed by Defendant or its predecessor or
24 merged entities in California as hourly, non-exempt employees, who worked for shifts over
25 10 hours and were not provided with second meal periods during the Class Period (“meal
26 period class members”);

27 (b) all individuals who are or were employed by Defendant or its predecessor or
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merged entities in California as hourly, non-exempt employees, who worked shifts in excess of three and a half hours during the Class Period (“rest period class members”);

(c) all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees, who work or worked in excess of eight hours in a day or forty hours in a workweek during the Class Period (“overtime class members”);

(d) all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees during the Class Period (“wage statement class members”); and

(e) all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees who were not provided rest days during the Class Period (“rest day class members”).

56. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants have, on average, during the Class Period employed over 200 Class Members. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

i. Whether Defendants violated sections 1194, 1194.2, and 1198 of the Labor Code by failing to pay Plaintiff and the members of the Class for all wages owed during the Class

1 Period;

2 ii. Whether Defendants violated Section 12 of IWC Wage Order No. 1 by
3 failing to provide paid rest periods to Plaintiff and the members of the Class in California during
4 the Class Period;

5 iii. Whether Defendants violated Labor Code section 226.7 by failing to provide
6 one hour of premium pay to each member of the Class for each day that a paid rest period was not
7 provided in California during the Class Period;

8 iv. Whether Defendants violated Labor Code sections 512 and 226.7, and
9 section 11 of IWC Wage Order No. 1 by failing to pay one hour of premium pay to each member of
10 the Class for each day that an unpaid meal break was not provided during the Class Period;

11 v. Whether Defendants violated Sections 510, 1194, 1194.2, and 1198 of the
12 Labor Code and IWC Wage Order No. 1 during the Class Period by failing to pay Plaintiff and the
13 Class Members all overtime wages owed;

14 vi. Whether Defendants violated Labor Code sections 221, 400-410, and Wage
15 Order no. 1, section 8, by deducting uniform and 401(k) costs from the pay of Plaintiff and the
16 Class Members in accordance with Defendants' policies;

17 vii. Whether Defendants violated Labor Code sections 204 and 210 by failing to
18 pay Plaintiff and the Class Members all wages owed with seven days of the close of payroll;

19 viii. Whether Defendants violated Section 203 of the Labor Code by failing to pay
20 members of the Waiting Time Penalty Subclass (those class members who have terminated their
21 employment with the Defendants) for all wages due to them (including their pay due for unpaid rest
22 breaks) upon their separation of employment from Defendant;

23 ix. Whether Defendants failed to provide Plaintiff and the Class Members
24 complete wage statements in violation of Labor Code Section 226(a);

25 x. Whether Defendants violated Labor Code sections 551 and 552 by failing to
26 provide Plaintiff and the Class Members a day of rest;

27 xi. Whether Defendants engaged in an unfair practice and violated section
28

1 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members
2 of the Class for all wages and overtimes wages owed during the Class Period;

3 xii. Whether Defendants engaged in an unfair practice and violated section
4 17200 of the California Business and Professions Code by failing to provide paid rest breaks to
5 members of the Class in violation of Labor Code section 226.7 and Section 12 of IWC Wage
6 Order No. 1;

7 xiii. Whether Defendants engaged in an unfair practice and violated section
8 17200 of the California Business and Professions Code by failing to provide off-duty meal breaks
9 to members of the Class in violation of Labor Code sections 512, 226.7 and Section 11 of IWC
10 Wage Order No. 1;

11 xiv. Whether Defendants engaged in an unfair practice and violated section
12 17200 of the California Business and Professions Code by failing to provide rest days to members
13 of the Class in violation of Labor Code sections 551 and 552;

14 xv. Whether Plaintiff and the Class are entitled to restitution under Business and
15 Professions Code § 17200;

16 xvi. The proper formula(s) for calculating damages, interest, and restitution
17 owed to Plaintiff and the Class Members;

18 xvii. The nature and extent of class-wide damages.

19 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
20 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
21 belonging to them, arising out of and caused by Defendants' common course of conduct in
22 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

23 d. Adequacy of Representation: Plaintiff is a member of the Class and will
24 fairly and adequately represent and protect the interests of the Class and Class Members.
25 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
26 Plaintiff are competent and experienced in litigating large wage and hour class actions, and other
27 employment class actions, and will devote sufficient time and resources to the case and otherwise
28

adequately represent the Class and Class Members.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this 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 or may be damaged in the future by reason of Defendants' unlawful policies and/or practices. Certification of this case as a class action 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. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining its unlawful compensation and non-reimbursement policies and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter, for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendants, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION
FAILURE TO PAY FOR ALL HOURS WORKED
[Cal. Labor Code §§ 1194; 1194.2, and 1198]
On behalf of Plaintiff and the Class Against All Defendants

57. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

58. Section 1194 of the Labor Code provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than minimum wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ..., including interest thereon, reasonable attorney's fees, and costs of suit.

59. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under...Section 1194 to recover wages because of the payment

1 of a wage less than the minimum wage fixed by an order of the commission,
2 an employee shall be entitled to recover liquidated damages in an amount
3 equal to the wages unlawfully unpaid and interest thereon.

4 60. As noted above, Plaintiff and the Class Members were only compensated for 40
5 hours of work each week, even if they worked for at least 60 hours weekly. While they would be
6 paid for a few hours of overtime on some weeks, no overtime was paid on most weeks.

7 61. Plaintiff and the Class Members were also not provided with second meal periods
8 and additional rest breaks even if they worked for at least 12 hours daily. In most instances, the
9 breaks were taken late or not given at all. As a result, Plaintiff and the Class Members are not
10 compensated for all hours worked in violation of Labor Code § 1194.

11 62. Accordingly, during the Class Period, Plaintiff and the members of the Class did not
12 receive minimum wage for their on-duty rest and meal periods and unpaid work hours.

13 63. Pursuant to sections 1194, 1194.2, and 1198 of the California Labor Code, Plaintiff
14 and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus
15 interest and/or liquidated damages in an additional amount equal to the total amount of wages
16 unlawfully withheld during the Class Period for unpaid work hours.

17 64. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also
18 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

19 **SECOND CAUSE OF ACTION**
20 **FAILURE TO PROVIDE PAID REST PERIODS TO**
21 **AND PAY MISSED REST BREAK PREMIUMS**
22 **[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 1]**
23 **On behalf of Plaintiff and the Class Against All Defendants**

24 65. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
25 in the preceding paragraphs.

26 66. Section 12 of IWC Wage Order No. 1 provides: "(A) Every employer shall
27 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
28 middle of each work period. The authorized rest period time shall be based on the total hours
worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction

1 thereof. However, a rest period need not be authorized for employees whose total daily work time
2 is less than three and one-half (3 1/2) hours. *Authorized rest period time shall be counted as hours*
3 *worked for which there shall be no deduction from wages.*” (Emphasis added).

4 67. California Labor Code § 226.7(a) provides, “No employer shall require any
5 employee to work during any meal or rest period mandated by an applicable order of the Industrial
6 Welfare Commission.”

7 68. As alleged herein, Defendant failed to implement a lawful rest period policy that
8 informed Plaintiff and the Class Members of their right to receive lawful rest periods for shifts
9 greater than 3.5 hours. Although Plaintiff and the Class Members worked for at least 12 hours per
10 day, Defendant only provided them with two (2) 15-minute breaks. In most instances, the breaks
11 were taken late or not given at all. To the extent that Plaintiff and the rest period aggrieved
12 employees could stop work during their shifts, they were nonetheless on-call, and were not
13 provided with duty-free rest periods. By failing to provide its employees paid rest periods of 10
14 minutes for each 4 hours of work, Defendants violated California Labor Code § 226.7, and are
15 liable to Plaintiff and the Class.

16 69. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not
17 provided paid rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the amount
18 of one additional hour of pay at the employee’s regular rate of compensation for each work period
19 during each day in which Defendants failed to provide employees with paid rest periods as
20 required by California law.

21
22 **THIRD CAUSE OF ACTION**
23 **FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE**
24 **TO PAY MISSED MEAL BREAK PREMIUMS**
[Cal. Labor Code §§ 226.7, 512]
On behalf of Plaintiff and the Class Against All Defendants

25 70. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
26 in the preceding paragraphs.

27 71. California Labor Code § 226.7(a) provides, “No employer shall require any
28

1 employee to work during any meal or rest period mandated by an applicable order of the Industrial
2 Welfare Commission.

3 72. Section 11(A) and (B) of IWC Wage Order No. 1 provide that:

4 “No employer shall employ any person for a work period of more than five (5)
5 hours without a meal period of not less than 30 minutes, except that when a
6 work period of not more than six (6) hours will complete the day’s work the
7 meal period may be waived by mutual consent of the employer and the
8 employee...An employer may not employ an employee for a work period of
9 more than ten (10) hours per day without providing the employee with a
10 second meal period of not less than 30 minutes, except that if the total hours
11 worked is no more than 12 hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal period
13 was not waived.

14 73. Section 11(C) of IWC Wage Order No. 1 provides that

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

22 74. Finally, Section 11(D) of IWC Wage Order No. 1 provides that

23 If an employer fails to provide an employee a meal period in accordance with
24 the applicable provisions of this order, the employer shall pay the employee
25 one (1) hour of pay at the employee’s regular rate of compensation for each
26 workday that the meal period is not provided.

27 75. As alleged herein, as a result of its meal period policies of not providing second
28 meal periods even if Plaintiff and the Class Members work for shifts over 10 hours each day,
Defendant violated Labor Code § 512 and IWC Wage Order No. 1 by failing to provide second
duty-free meal periods to Plaintiff and the Class Members of 30 minutes or more., and are liable to
Plaintiff and the Class.

76. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not
provided timely duty-free meal breaks, and are entitled to recovery under Cal. Labor Code §226.7
in the amount of one additional hour of pay at the employee’s regular rate of compensation for
each work period greater than 5 hours in California during each day in which Defendants failed to

1 provide employees with timely duty-free meal periods as required by California law.

2
3 **FOURTH CAUSE OF ACTION**
4 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**
5 **[Cal. Labor Code §§ 204]**
6 **On behalf of Plaintiff, and the Class Against All Defendants**

7
8 77. Plaintiff incorporates by this reference, as though fully set forth herein, the
9 preceding paragraphs of this Complaint.

10 78. Cal. Lab. Code §200 provides that “‘wages’ include all amounts for labor
11 performed by employees of every description, whether the amount is fixed or ascertained by the
12 standard of time, task, pieces, commission basis, or other method of calculation.”

13 79. Cal. Labor Code §204 states that all wages earned by any person in any
14 employment are payable twice during the calendar month, and must be paid not more than seven
15 days following the close of the period when the wages were earned.

16 80. Cal. Lab. Code §216 establishes that it is a misdemeanor for any person, with
17 regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with
18 intent to secure himself, his employer or other person, any discount upon such indebtedness, or
19 with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such
20 indebtedness is due.”

21 81. Defendants, as a matter of established company policy and procedure, in the State
22 of California, scheduled, required, suffered, and/or permitted Plaintiff and other members of the
23 Class, to work during payperiods, and not compensate them for their work within seven days of the
24 close of payroll.

25 82. In addition, Defendants, as a matter of established company policy and procedure in
26 the State of California, scheduled, required, suffered and/or permitted Plaintiff and the members of
27 the Class, to work without compensation, work without legally compliant off-duty meal periods
28 and rest periods, and failed to pay Plaintiff and the members of the Class, for their hours worked,
meal period premiums, and rest period premiums within seven days of the close of payroll, as
required by law.

83. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff and the other members of the Class these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff and the Class Members.

84. Defendants' pattern, practice and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and members of the Class, to recover, pursuant to Cal. Lab. Code §218, the unpaid balance of the compensation owed to them in a civil action.

85. Pursuant to Cal. Lab. Code §218.6 and to Cal. Civ. Code §§3287 (b) and 3289, Plaintiff and members of the Class, seek to recover pre-judgment interest on all amounts recovered herein.

86. Pursuant to Cal. Lab. Code §218.5, Plaintiff and members of the Class, request that the Court award them reasonable attorneys' fees and the costs incurred by them in this action, as well as any statutory penalties Defendants' may owe under the California Labor Code and/or any other statute.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a) and 226.2(a)(2)(A)-(B)]
On behalf of Plaintiff and the Wage Statement and Penalty Subclass Against All Defendants

87. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

88. The actionable period for this cause of action is one year prior to the filing of this Complaint through the present, and on-going until the violations are corrected or the subclass is certified.

89. Section 226(a) of the California Labor Code provides, in relevant part:

Every employer shall...furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all

deductions, provided that all -deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

90. As set forth above, during the Class Period, due to its unlawful rest and meal period policies, Defendants failed to issue wage statements to its employees in California, including Plaintiff, that complied with Labor Code Section 226(a).

91. Defendants' "wage statements" failed to comply with either section 226 or 226.2. First, Defendants failed to identify themselves as the employer. Second, Defendants' "wage statements" also did not include total hours worked, the total amount of time spent on rest periods & other nonproductive tasks, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code Sections 226(a) and 226.2.

92. Defendants failure to comply with section 226(a) of the Labor Code was knowing and intentional, particularly following the issuance of *McKenzie v. Federal Express Corp.*, 765 F.Supp.2d 1222, 1229 (C.D.Cal. 2011) and/or the passage of Section 226.2.

93. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class who were employed by Defendants during the actionable period for this cause of action) in violation of section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

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SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES FOR
FAILURE TO PAY WAGES DUE ON TERMINATION
[Cal. Labor Code §§ 201-203]

On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against All Defendants

94. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

95. The actionable period for this cause of action is three years prior to the filing of the Complaint through the present, and on-going until the violations are corrected, or the subclass is certified.

96. Sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due and owing to former employees in the Class during the actionable period for this cause of action, at or around the time that their employment is terminated.

97. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

98. By virtue of its unlawful meal and rest period policies, Defendants willfully failed to pay Plaintiff and other members of the Waiting Time Penalty Subclass (i.e., those members of the Class whose employment with Defendants ended the actionable period for this cause of action) who are no longer employed by Defendants for their time spent on statutory rest breaks and the other Nonproductive times prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

99. As a result, Defendants are liable to Plaintiff and other members of the waiting time penalty subclass who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each such subclass member 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).

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SEVENTH CAUSE OF ACTION
FAILURE TO PAY ALL OVERTIME WAGES
(Violation of Labor Code §§ 510, 1194, and 1198, and the "Hours and Days of Work" section
of IWC Wage Order No. 1)
By Plaintiff and the Overtime Class Against All Defendants

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

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

102. Labor Code § 1194 provides that any employee receiving less than 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 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

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

104. The IWC Wage Order 1-2001 defines the term "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

105. In California, overtime is computed based on the regular rate of pay. The regular rate of pay includes all different types of remuneration, including hourly earnings, salary,

1 piecework earnings, commissions, and non-discretionary bonuses, and the value of meals and
2 lodging.

3 106. Plaintiff and members of the Overtime Class regularly worked over eight hours per
4 day and 40 hours per week while employed by Defendants. Plaintiff and members of the Overtime
5 Class did not receive all overtime compensation owed for all overtime hours worked over eight
6 hours per day and/or 40 hours per week, and/or for every hour worked during the seventh day of
7 work, at the applicable overtime rate during their employment with Defendants.

8 107. Defendants failed to pay Plaintiff and members of the Overtime Class at the proper
9 overtime rate for all the time spent working and under the control of Defendants. Defendants also
10 failed to pay overtime compensation for all overtime hours worked over eight hours per day and/or
11 40 hours per week.

12 108. Plaintiff and members of the Overtime Class suffered and continue to suffer losses
13 related to the use and enjoyment of compensation due and owing to them as a direct result of
14 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof
15 at trial and within the jurisdictional limitations of this Court.

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

19 **EIGHTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE REST DAY**
21 **(Violation of Labor Code §§ 551 and 552)**
22 **By Plaintiff and the Rest Day Class Against All Defendants**

23 110. Defendant failed to provide Plaintiff and the Class Members rest days in accordance
24 with Labor Code §§ 551 and 552, which provide as follows:

25 551. Every person employed in any occupation of labor is entitled to one
26 day's rest therefrom in seven.

27 552. No employer of labor shall cause his employees to work more than
28 six days in seven.

111. Despite these requirements under the law, Defendant made Plaintiff and the Class Members work for seven consecutive days on several workweeks without providing them with rest days, in violation of Labor Code §§ 551 and 552. *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074, 1083 (2017). Further, Plaintiff and the Class Members do not fall within any exception to Labor Code §§ 551 and 552. They are not part-time employees as defined by Labor Code §556, as each works in excess of 30 hours in a workweek, and more than 6 hours in any one day of that workweek. Further, the nature of the work does not fit within any of the exceptions illuminated in Labor Code § 554, nor does it necessarily create a need to work more than seven consecutive days. As a result, Defendant has violated Labor Code §§ 551 and 552.

NINTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
On Behalf of Plaintiff and the Class Against All Defendants

112. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

113. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

114. Under section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, or the Class is certified.

115. Section 90.5(a) of the Labor Code states that it is the public policy of California to enforce vigorously minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law

1 from those who attempt to gain competitive advantage at the expense of their workers by failing to
2 comply with minimum labor standards.

3 116. As a direct and proximate result of Defendants' unlawful business practices,
4 Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from
5 its unlawful, unfair, and/or fraudulent acts and practices.

6 117. Plaintiff and similarly situated Class Members are entitled to monetary relief
7 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid wages, unpaid meal
8 and rest period premiums, due and interest thereon, from at least four years prior to the filing of
9 this complaint through to the date of such restitution, at rates specified by law. Defendants should
10 be required to disgorge all the profits and gains it has reaped and restore such profits and gains to
11 Plaintiff and Class Members, from whom they were unlawfully taken.

12 118. Through its actions alleged herein, Defendants have engaged in unfair competition
13 within the meaning of section 17200 of the California Business & Professions Code, because
14 Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by
15 wrongfully denying them wages due for all hours worked, wrongfully denying them overtime
16 wages, wrongfully denying them missed meal and rest period premiums, and wrongfully denying
17 them rest days, and therefore was substantially injurious to Plaintiff and the Class Members.

18 119. Defendants engaged in unfair competition in violation of sections 17200 et seq. of
19 the California Business & Professions Code by violating Sections §§201, 202, 203, 204, 210, 226,
20 226.3, 226.7, 510, 512, 551, 552, 1194, 1194.2, 1197, 1197.1, 1198, 1199, as well as IWC Wage
21 Order No. 1-2001.

22 120. Defendants' course of conduct, act and practice in violation of the California laws
23 mentioned above constitute independent violations of sections 17200 et seq. of the California
24 Business and Professions Code.

25 121. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
26 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

27 122. Plaintiff has assumed the responsibility of enforcement of the laws and public
28

1 policies specified herein by suing on behalf of themselves and other similarly situated Class
2 Members previously or presently employed by Defendants in California. Plaintiff's success in this
3 action will enforce important rights affecting the public interest. Plaintiff will incur a financial
4 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
5 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code §
6 1194.

7 **TENTH CAUSE OF ACTION**
8 **VIOLATIONS OF THE PRIVATE ATTORNEY GENERALS ACT OF 2004**
9 **[Labor Code § 2698, et seq.]**
10 **On Behalf of Plaintiff and the Class Against All Defendants**

11 123. Plaintiff, on behalf of himself and all aggrieved employees, realleges and
12 incorporates by reference all previous paragraphs.

13 124. Based on the above allegations incorporated by reference, Defendants have violated
14 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 552, 1194, 1194.2, 1197,
15 1197.1, 1198, 1199, as well as IWC Wage Order No. 1-2001.

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

19 \$100 for the initial violation per employee per pay period; and

20 \$200 for each subsequent violation per employee per pay period.

21 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
22 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These
23 penalties may be stacked separately for each of Defendants violations of the California Labor
24 Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist.
25 LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not
26 seek stacked PAGA penalties, that "PAGA penalties can be 'stacked,' i.e., multiple PAGA
27 penalties can be assessed for the same pay period for different Labor Code violations."); *See Lopez*
28 *v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26,
2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code

1 section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of
2 section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for
3 violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-
4 cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F*
5 *& B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at *
6 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist.
7 LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

8 126. In addition, to the extent permitted by law, Plaintiff failed to provide Plaintiff and
9 all aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
10 226(a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code §§
11 226(a) and 226(e). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell v. Home*
12 *Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS
13 204493, at *5 [finding after Friant that “[t]o the extent the Court's Order [granting summary
14 judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary
15 judgment on Plaintiffs' derivative claim for [PAGA] penalties under section 226(e)...the Court's
16 Order should not be read to grant summary judgment on Plaintiffs' claim for PAGA penalties
17 based on violation of section 226(a).”]. For violations of Labor Code § 226(a), Plaintiff seeks the
18 default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny
19 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the
20 amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and
21 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
22 the employer fails to provide the employee a wage deduction statement or fails to keep the
23 required in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent
24 permitted by law Plaintiff and the aggrieved employees are entitled to recover penalties for
25 violations of Labor Code § 226.3 and seeks default PAGA penalties for each of Defendants’
26 numerous violations of Labor Code § 226(e).

127. Pursuant to Labor Code § 2699.3 (a), on July 20, 2021, Plaintiff gave written notice by certified mail to Defendant, and to the LWDA of his claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 552, 1194, 1194.2, 1197, 1197.1, 1198, 1199, as well as IWC Wage Order No. 1-2001, and theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of his PAGA claims on himself and all other current and former Aggrieved Employees of Defendant.

128. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 552, 1194, 1194.2, 1197, 1197.1, 1198, 1199, as well as IWC Wage Order No. 1-2001.

JURY DEMAND

129. Plaintiff hereby demands trial by jury of her and the Class's claims against Defendants.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself and the members of the Class, pray for judgment against Defendants as follows:

1. An Order that this action may proceed and be maintained as a class action;

2. On the First Cause of Action:

a. A declaratory judgment that Defendants violated sections 1194, 1194.2, and 1198 of the California Labor Code by failing to pay Plaintiff and other members of the Class hourly and separately for all of their time spent working during the class period;

b. An award to Plaintiff and other members of the Class in the amount of their unpaid wages owed to them for all of their time spent working, plus interest and/or liquidated damages during the class period;

c. An award to Plaintiff and the other members of the Class in the amount of

1 their unpaid wages owed to them for all of their time spent working during the class period, plus
2 interest; and/or liquidated damages;

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

6 3. On the Second Cause of Action:

7 a. A declaratory judgment that Defendants violated California Labor Code §
8 226.7, and Section 12 of IWC Wage Order No. 1-2001;

9 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
10 Members for an hour of pay for each day that a paid rest period was not provided during the Class
11 Period;

12 4. On the Third Cause of Action

13 a. A declaratory judgment that Defendants violated California Labor Code §§
14 226.7 and 512, and Section 11 of IWC Wage Order No. 1-2001;

15 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
16 Members for an hour of pay for each day that an off-duty meal period was not provided during the
17 Class Period;

18 5. On the Fourth Cause of Action

19 a. A declaratory judgment that Defendants violated California Labor Code
20 §204 by paying Plaintiff, and the Class more than seven days after the close of payroll.

21 b. For compensatory damages, including lost wages, bonuses, and other losses,
22 according to proof,

23 c. For general damages, according to proof;

24 d. For an award of interest, including prejudgment interest at the legal rate;

25 e. For statutory damages, including reasonable attorneys' fees and costs of
26 suit.

27 6. On the Fifth Cause of Action:

1 a. A declaratory judgment that Defendants violated California Labor Code
2 §226 by issuing inaccurate and/or incomplete wage statements that failed to include total hours
3 worked and all applicable hourly rates in effect during the pay period and the corresponding
4 number of hours worked at each hourly rate to Plaintiff and the wage statement and penalty
5 subclass members;

6 b. An award to Plaintiff and Class Members of \$50 for each initial pay period,
7 one year prior to the filing of this Complaint through the date of trial, in which a violation of
8 Section 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this
9 Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed
10 \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees,
11 pursuant to Labor Code § 226(e).

12 7. On the Sixth Cause of Action:

13 a. A declaratory judgment that Defendants violated California Labor Code §§
14 201 through 203;

15 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
16 the Waiting Time Penalty Subclass members for waiting time penalties in the amount of 30 days'
17 wages per waiting time penalty subclass Class Member.

18 8. On the Seventh Cause of Action:

19 a. A declaratory judgment that Defendants violated sections 510, 1194, 1194.2
20 of the California Labor Code by failing to pay Plaintiff and other members of the Overtime Class
21 for all compensation for all hours worked in excess of eight hours in a day or forty hours in a
22 workweek at the proper overtime rate;

23 b. An award to Plaintiff and the other members of the Overtime Class in the
24 amount of their unpaid overtime compensation owed to them plus interest; and/or liquidated
25 damages;

26 c. An award to Plaintiff and the Overtime Class Members of their attorneys'
27 fees and costs of suit to the extent permitted by law, including, but not limited to, section 1194 of
28

1 the California Labor Code and section 1021.5 of the California Code of Civil Procedure;

2 9. On the Eighth Cause of Action:

3 a. A declaratory judgment that Defendants violated California Labor Code §§
4 551 and 552;

5 b. An award to Plaintiff and Class Members of \$50 for each initial pay period,
6 one year prior to the filing of this Complaint through the date of trial, in which violations of
7 Sections 551 and 552 occurred and \$100 for each subsequent pay period, one year prior to the
8 filing of this Complaint through the date of trial, in which violations of Section 551 and 552
9 occurred, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code §
10 558;

11 10. On the Ninth Cause of Action:

12 a. That the Court find and declare that Defendants have violated the UCL and
13 committed unfair and unlawful business practices by failing to pay Plaintiff and Class Members on
14 a separate and hourly basis for their rest break time, all wages and overtime wages owed, by
15 failing to pay missed meal and rest break premiums, and by failing to provide rest days;

16 b. Restitution, including, but not limited to, the relief permitted by sections
17 1194, 221, 223, 226.7, 551, and 552 of the California Labor Code (i.e., pay as specified for all
18 hours worked, rest days that were not provided, and time spent on rest periods by Plaintiff and the
19 members of the Class during the Class Period), as well as a disgorgement of all profits associated
20 with Defendants' unlawful policies as described above;

21 11. On the Tenth Cause of Action:

22 a. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for
23 Plaintiff and all aggrieved employees because of Defendants' violation of Labor Code §§ 201, 202,
24 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 552, 1194, 1194.2, 1197, 1197.1, 1198, 1199, as
25 well as IWC Wage Order No. 1-2001;

26 b. A civil penalty against Defendants in the amount of \$100 for the initial
27 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
28

1 California Labor Code for Plaintiff and all aggrieved employees for each and every pay period
2 during that occurred between July 20, 2020 through trial;

3 c. A civil penalty against Defendants, pursuant to Labor Code § 1197.1 for the
4 initial violation that is intentionally committed, in the amount of one hundred dollars (\$100) for
5 each underpaid employee for each pay period for which the employee is underpaid and for each
6 subsequent violation, two hundred fifty dollars (\$200) for each underpaid employee for each pay
7 period for which the employee is underpaid regardless of whether the initial violation was
8 intentionally committed, for Plaintiff and all aggrieved employees for each and every payperiod
9 during that occurred between July 20, 2020 through trial;

10 d. A civil penalty against Defendants pursuant to Labor Code § 210 for the
11 initial violation that is committed, in the amount of one hundred dollars (\$100) for each underpaid
12 employee for each pay period for which the employee is underpaid and for each subsequent
13 violation, two hundred dollars (\$250) for each underpaid employee for each pay period for which
14 the employee is underpaid, for Plaintiff and all aggrieved employees for each and every payperiod
15 during that occurred between July 20, 2020 and the date of judgment and/or approval of
16 settlement;

17 e. A civil penalty against Defendants pursuant to Labor Code § 226.3 for the
18 initial violation that is committed, in the amount of two hundred fifty dollars (\$250) for the initial
19 each inaccurate wage statement provided to Plaintiff and the Aggrieved Employees and for each
20 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay
21 period for which the employee is provided an incomplete or inaccurate wage statement, for
22 Plaintiff and all aggrieved employees for each and every pay period during that occurred between
23 July 20, 2020 and the date of judgment and/or approval of settlement;

24 f. An award of reasonable attorney's fees against Defendants as specified in
25 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
26 with the PAGA claims;

g. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and the aggrieved employees' claims against Defendants as provided for in Labor Code § 2699(g)(1);

12. All other relief as this Court deems proper.

Dated: September 28, 2021

Respectfully,

POTTER HANDY LLP.

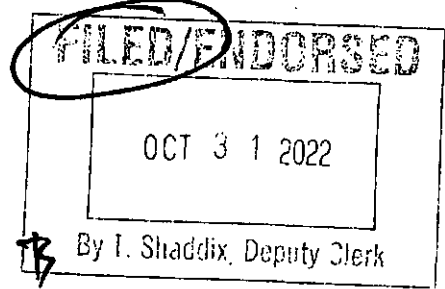
James Treglio

By: James M. Treglio
Counsel for Plaintiff and the Putative Class

EXHIBIT 3

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ebronchetti@mwe.com
2 SANIYA AHMED (SBN 315535)
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3 MCDERMOTT WILL & EMERY LLP
415 Mission St., Suite 5600
4 San Francisco, CA 94105-2616
Telephone: +1 628 218 3800
5 Facsimile: +1 628 877 0107

6 Attorneys for Defendant
NOR-CAL BEVERAGE CO., INC



8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 STEFAN MAYERS, individually, and on behalf
11 of aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"),

12 Plaintiff,

13 v.

14 NOR-CAL BEVERAGE CO., INC., a California
15 corporation, and DOES 1 through 100, inclusive

16 Defendants.

CASE NO. 34-2021-00303062-CU-OE-GDS

**~~PROPOSED~~ ORDER GRANTING
DEFENDANT NOR CAL BEVERAGE
CO., INC.'S MOTION TO COMPEL
ARBITRATION**

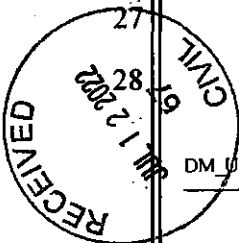
*[Filed concurrently with (1) Notice of Motion;
(2) Memorandum of Points and Authorities; (3)
Declaration of Ellen M. Bronchetti; (4)
Declaration of Terri Erwin; and (5)
Declaration of Barbara Davis]*

DATE: October 21, 2022
TIME: 9:00 a.m.
JUDGE: Hon. Jill. H. Talley
DEPT: 25

Reservation No. 2658784

MCDERMOTT WILL & EMERY LLP
ATTORNEYS AT LAW
LOS ANGELES

BY FAX



DM JS 189542721-1.106051.0014

~~PROPOSED~~ ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION

PROPOSED ORDER

This matter came before the Court on October 21, 2022 at 9:00 a.m. upon Defendant Nor-Cal Beverage Co., Inc.'s Motion to Compel Arbitration (the "Motion"). Appearances were made before the Honorable Jill H. Talley in Department 25 of the above-entitled Court, as stated in the record. The Court, having considered the Motion, Plaintiff's Opposition to the Motion, Defendant's Reply in support of the Motion, the Parties' supporting papers, and the records and files herein, and **GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

Defendant's Motion to Compel Arbitration is GRANTED. Plaintiff must arbitrate his individual claims and his remaining representative claims are dismissed.

Dated: 10/31/22



Judge of the Superior Court

JILL H. TALLEY

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60550 COURT HOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY



WILLIAMS

EXHIBIT 4

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Judicial Council of California

JUL 17 2023

Coordination Lawyer

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
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751 N. Fair Oaks Ave., Suite 101
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Fax: (818) 230-7259

Attorneys for Petitioner

**CHAIR OF THE JUDICIAL COUNCIL
OF THE STATE OF CALIFORNIA**

RICARDO ALEXANDER OCAMPO,
individually and on behalf of others similarly
situated;

Plaintiff,

vs.

NOR-CAL BEVERAGE CO., INC., a
California corporation with its principal place of
business in California; and DOES 1
through 100, inclusive;

Defendants.

ANDREW MAPES, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

NOR-CAL BEVERAGE CO., INC., a
California corporation; and DOES 1
through 100, inclusive;

Defendants.

JCCP No. **5294**

**PETITIONER ANDREW MAPES'
PETITION FOR COORDINATION
AND APPLICATION FOR
IMMEDIATE STAY;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Declaration of William Wilkinson
submitted concurrently herewith]

Ocampo v. Nor-Cal Beverage Co., Inc.,
Superior Court of California for the County
of Orange, Case No. 30-2021-01226173-
CU-OE-CXC

Department CX105
Honorable Randall J. Sherman

Mapes v. Nor-Cal Beverage Co., Inc.,
Superior Court of California for the County
of Yolo, Case No. CV2022-1076

Department 11
Honorable Timothy L. Fall

1 **TO THE CHAIRPERSON OF THE JUDICIAL COUNCIL, THE PARTIES TO THE**
2 **ACTIONS, AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that Petitioner Andrew Mapes (“Petitioner”), through his counsel
4 of record, submits this petition pursuant to California Code of Civil Procedure section 404 and
5 California Rules of Court 3.500 *et seq.*, to request assignment of a judge to determine whether it
6 would be appropriate to coordinate this action with the action listed below. Petitioner also requests an
7 immediate stay of all proceedings pursuant to California Code of Civil Procedure section 404.5 until
8 the Judicial Counsel rules on the instant petition.

9 This Petition is made on the grounds that: (1) these actions share common questions of law
10 and fact, which predominate the litigation; (2) coordination will serve convenience of the parties,
11 witnesses, and counsel; (3) the relevant development of these cases will streamline and simplify
12 discovery and litigation if these cases are coordinated; (4) judicial facilities and resources will be
13 more efficiently utilized if the cases are coordinated; (5) coordination will facilitate settlement
14 discussions on a global basis; and (6) the coordination of these actions will promote the ends of
15 justice. The Petition is supported by the declaration of William Wilkinson setting forth facts showing
16 that the actions are complex, and that coordination would satisfy the criteria set forth in Code of Civil
17 Procedure section 404.1.

18 The actions sought to be coordinated are:

- 19 1. *Ocampo v. Nor-Cal Beverage Co., Inc.*, Case No. 30-2021-01226173-CU-OE-CXC
20 pending in the Orange County Superior Court (the “*Ocampo* Action”), and
- 21 2. *Mapes v. Nor-Cal Beverage Co., Inc., et al.*, Case No. CV2022-1076 pending
22 in the Yolo County Superior Court (the “*Mapes* Action”).

23 The *Mapes* Action meets the complex case criteria according to the California Rules of Court,
24 rule 3.400(a). The *Ocampo* Action also meets the complex case criteria according to the California
25 Rules of Court, rule 3.400(a).

26 ///

27 ///

28 ///

1 The full title of each action, names of all parties, date the complaints were filed, title of the
2 court, and the names and addresses of counsel for each referenced case above are set forth in the
3 attached Declaration of William Wilkinson. Proof of filing in each Action of a Notice of Submission
4 of Petition for Coordination, as required by California Rule of Court 3.522, and Proof of Service on
5 each party appearing in each Action of the Notice of Petition for Coordination, as required by
6 California Rule of Court 3.523 will be filed within five (5) days of the filing of this Petition.

7 Proof of filing in each Action of a Notice of Submission of Petition for Coordination, as
8 required by California Rule of Court 3.522, and Proof of Service on each party appearing in each
9 Action of the Notice of Petition for Coordination, as required by California Rule of Court 3.523 will
10 be filed within five (5) days of the filing of this Petition.

11 Pursuant to California Code of Civil Procedure sections 404 and 404.3, and California Rules
12 of Court, Rules 3.521 and 3.540, Petitioner requests that any hearing on this Petition and the
13 Coordinated Proceedings in the above-entitled actions be assigned to the Yolo County Superior
14 Court. Pursuant to the California Code of Civil Procedure Section 404.5, Petitioner further requests
15 that the coordination motion judge order a stay of both proceedings in this action pending the
16 determination of whether coordination is appropriate. The request for a stay is made on the grounds
17 that the stay order is necessary and appropriate to effectuate the purposes of coordination identified
18 above and as set forth in Code of Civil Procedure section 404.1.

19 Pursuant to the California Code of Civil Procedure Section 404.5, Petitioner further requests
20 that the coordination motion judge order a stay of both proceedings in this action pending the
21 determination of whether coordination is appropriate. The request for a stay is made on the grounds
22 that the stay order is necessary and appropriate to effectuate the purposes of coordination identified
23 above and as set forth in Code of Civil Procedure section 404.1.

24 ///

25 ///

26 ///

1
2 If no party to any of the above referenced actions serve and submit a written opposition to this
3 Petition within the time allowed by the California Rule of Court 3.525, Petitioner requests that this
4 Petition for Coordination be granted without a hearing. If any such written opposition is served and
5 submitted within the time allowed, Petitioner requests that a hearing on this Petition be conducted in
6 the Yolo County Superior Court. This Petition is based on this Petition, the accompanying
7 Memorandum of Points and Authorities, the declaration of William Wilkinson, and any such matters
8 as may properly be presented at the hearing on this Petition.
9

10 Date: July 5, 2023

JUSTICE LAW CORPORATION

11
12 By: 

Douglas Han
Shunt Tatavos-Gharajeh
William Wilkinson
Attorneys for Petitioner

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 California law authorizes the coordination of complex cases pending in different courts
4 whenever they share common questions of law or fact. (Code Civ. Proc. § 404.) The state seeks to
5 coordinate these types of cases to promote the efficient use of judicial resources to facilitate
6 resolution of all actions. (Code Civ. Proc. § 404.1.)

7 By the Petition, Petitioner seeks to coordinate the following actions:

- 8 1. *Ocampo v. Nor-Cal Beverage Co., Inc.*, Case No. 30-2021-01226173-CU-OE-CXC
9 pending in the Orange County Superior Court (the “*Ocampo* Action”), and
10 2. *Mapes v. Nor-Cal Beverage Co., Inc., et al.*, Case No. CV2022-1076 pending
11 in the Yolo County Superior Court (the “*Mapes* Action”).

12 Petitioner seeks to coordinate the above referenced, nearly identical, complex wage and hour
13 class and/or representative actions filed against Nor-Cal Beverage Co., Inc. (“Nor-Cal Beverage” or
14 “Defendant”). These complex actions must be coordinated before they progress any further to avoid
15 burdens in terms of time and expense to the parties, as well as the courts, to avoid inconsistent rulings
16 in the different actions, and above all in the interest of justice. Coordination of the *Ocampo* and
17 *Mapes* Actions is proper and necessary because each action is complex and arises from similar course
18 of events, the majority of claims asserted in each are premised upon similar legal theories and factual
19 allegations, and the cases involve a substantially similar group of affected employees. Specifically,
20 the cases share eight causes of action, including Nor-Cal Beverage’s failure to pay overtime, failure
21 to pay minimum wages, failure to provide meal and rest periods and pay premium wages for such
22 violations, failure to timely pay wages owed, failure to issue compliant wage statements, failure to
23 reimburse employees for all business expenses, and unfair business practices in violation of
24 California Business & Professions Code section 17200, et seq.

25 Moreover, coordination will not cause any logistical issues as both the actions are in similar
26 stages of litigation. In fact, coordination will protect the class members and aggrieved employees that
27 are part of the tentative *Ocampo* settlement because it will allow all parties to be in one forum and
28 any potential wrongdoing and any improper strategic conduct by the settling parties in the *Ocampo*

1 Action will be decided by one judicial officer overseeing both cases. Notably, in June and July 2022,
2 around the time Petitioner filed his action, Nor-Cal Beverage sought and procured individual *Pick-Up*
3 *Stix* settlements with 1,029 putative class members totaling over \$1,360,000 prior to negotiating its
4 class release with Plaintiff Ocampo. (See Declaration of William Wilkinson in support of Petition to
5 Coordinate [“Wilkinson Decl.”], Exh. E [Memorandum of Points and Authorities In Support of
6 Plaintiff Ocampo’s Motion for Preliminary Approval of Class Settlement at pp. 1, 3, 16-17].) More
7 troubling, the parties in the *Ocampo* Action now seek court approval of a gross settlement of only
8 \$390,000 in a complex matter that involves over 1,200 current and former employees, and the
9 parties’ moving papers provide insufficient evidentiary support that the settlement reached is fair,
10 reasonable, and adequate in compliance with the standards established in *Kullar v. Foot Locker*
11 *Retail, Inc.* (2008) 168 Cal.App.4th 116 (“*Kullar*”) (See *id.*, Exh. E at p. 1.) Thus, this tentative
12 settlement raises concerns as to potential wrongdoing and improper strategic conduct by the settling
13 parties in the *Ocampo* Action attempting to obtain a broad class release without properly valuing each
14 claim.

15 In light of the above concerns, if coordination is denied, any motion for settlement approval
16 could be subject to challenge. Coordination will therefore foster greater cooperation among all of the
17 interested parties and promote efficiency of judicial resources by avoiding protracted litigation and
18 motion practice in both cases. Accordingly, in an effort to protect the putative class, avoid burdens of
19 time and expense to all the parties, avoid inconsistent rulings and judgments, and determine if the
20 parties’ conduct in the *Ocampo* Action constituted a reverse auction, the Court must ensure these
21 actions are coordinated and proceed together.

22 **II. RELEVANT BACKGROUND**

23 **A. Ocampo v. Nor-Cal Beverage Co., Inc. (the “Ocampo Action”)**

24 On October 13, 2021, Ricardo Alexander Ocampo (“Plaintiff Ocampo”), individually and on
25 behalf of others similarly situated, filed a Class Action Complaint for Damages against Nor-Cal
26 Beverage in the Orange County Superior Court (the “*Ocampo* Action”). (Wilkinson Decl., ¶ 2,
27 Exh. A.) The *Ocampo* Action includes claims for (1) failure to pay all wages owed; (2) failure to pay
28 all overtime wages owed; (3) failure to provide meal periods and pay missed meal period premiums;

(4) failure to provide rest breaks and pay rest break premiums; (5) failure to provide accurate wage statements within the four years prior to the filing of the Complaint; (6) failure to pay all wages owed in a timely manner; (7) failure to pay all wages due to former employees; (8) failure to provide a day of rest; (9) violation of the California Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. (“PAGA”); and (10) unfair business practices based on the foregoing in violation of the California Business & Professions Code section 17200, et seq. (*Ibid.*)

Defendant removed the *Ocampo* Action to federal court on January 7, 2022, and Plaintiff Ocampo’s motion to remand was granted on April 1, 2022. The *Ocampo* Action was then re-assigned to the Honorable Randall J. Sherman in the Complex Civil Department CX105 for all purposes. (Wilkinson Decl., ¶ 3, Exh. B.)

On January 30, 2023, Plaintiff Ocampo filed a Motion for Preliminary Approval of a Class Settlement (the “MPA”) in the *Ocampo* Court. (Wilkinson Decl., ¶ 9, Exh. E.) The MPA papers stated that Plaintiff Ocampo had reached a settlement with Nor-Cal Beverage in late 2022. (*Id.* at p. 3.) The hearing for the MPA was initially set for May 5, 2023. (Wilkinson Decl., ¶ 9; cf. *id.*, ¶ 14, Exh. I.)

On February 28, 2023, Plaintiff Ocampo filed his First Amended Complaint, adding a cause of action for Defendant’s alleged failure to reimburse employees for necessary business expenses and costs pursuant to Labor Code section 2802—identical to Plaintiff Mapes’ seventh cause of action. (Wilkinson Decl., ¶ 12, Exh. H.)

On May 5, 2023, the *Ocampo* Court continued the MPA hearing to July 28, 2023 and issued a minute order, which detailed the deficiencies in Plaintiff Ocampo’s moving papers and instructed the parties to file extensive supplemental papers addressing the Court’s concerns regarding deficiencies in the MPA and the sufficiency of evidence that the settlement was fair, reasonable and adequate. (Wilkinson Decl., ¶ 14, Exh. I.)

B. Mapes v. Nor-Cal Beverage Co., Inc. (the “Mapes Action”)

On June 22, 2022, Petitioner Andrew Mapes filed his class action complaint against Nor-Cal Beverage, individually and on behalf of other members of the general public similarly situated, in the Yolo County Superior Court. (Wilkinson Decl., ¶ 4, Exh. C.) The complaint includes eight causes of

1 action based on Defendant's alleged (1) failure to pay overtime; (2) failure to pay meal premiums;
2 (3) failure to pay rest premiums; (4) failure to pay all minimum wages; (5) failure to pay all wages
3 owed in a timely manner; (6); failure to provide accurate wage statements; (7) failure to reimburse
4 employees for all necessary business expenses and costs; and (8) unfair business practices based on
5 the foregoing in violation of the California Business & Professions Code section 17200, et seq. (*Ibid.*)
6 The case was deemed complex and was ultimately assigned to the Honorable Timothy Fall in
7 Department 11 of the Yolo County Superior Court. (*Ibid.*)

8 On July 26, 2022, Petitioner served written discovery via U.S. Mail on Defendant, including
9 Special Interrogatories, Requests for Production of Documents, Requests for Admission, and Form
10 Interrogatories – General. (Wilkinson Decl., ¶ 5.) Defendant raised objections to producing
11 discovery, and the parties engaged in a protracted discovery dispute that lasted months and ultimately
12 necessitated motion practice. (*Ibid.*) From the beginning, the gravamen of Defendant's objections to
13 producing discovery, as represented by Defendant's counsel, was that Nor-Cal Beverage and Plaintiff
14 Ocampo had reached a tentative settlement agreement that would subsume Plaintiff Mapes' class
15 claims. (*Ibid.*) However, during this period, Defendant offered no proof that a settlement had been
16 reached, nor did the parties in the *Ocampo* Action file a Motion for Preliminary Approval. (*Ibid.*)
17 Moreover, Defendant neglected to file a Motion to Stay proceedings in the *Mapes* Action in light of
18 the *Ocampo* Action. (*Ibid.*)

19 On September 13, 2022, Plaintiff Mapes propounded second sets of special interrogatories
20 and requests for production of documents to Nor-Cal Beverage seeking information regarding Nor-
21 Cal Defendant's efforts in June and July 2022 to negotiate and execute individual settlements with
22 current and former Nor-Cal Beverage employees. (Wilkinson Decl., ¶ 6.) Nor-Cal Beverage
23 ultimately produced responses and documents (subject to objections) on November 23, 2022. (*Ibid.*)

24 On October 25, 2022, Defendant filed its Case Management Statement in the *Mapes* Court
25 that identified the *Ocampo* Action as a companion, underlying, or related case. (Wilkinson Decl., ¶ 7,
26 Exh. D.)

27 On December 6, 2022, Plaintiff Mapes filed Motions to Compel Further Responses for
28 1) Special Interrogatories (Set One) seeking putative class contact information and 2) Requests for

1 Production of Documents (Set One) seeking relevant policy documents and time and pay data for the
2 class. (Wilkinson Decl., ¶ 8.)

3 On February 21, 2023, Defendant filed a Motion to Stay proceedings of the *Mapes* Action in
4 light of the *Ocampo* Action and the pending settlement. In its Motion, Defendant asserted that “it
5 cannot be reasonably disputed that the subject matter between the Mapes action and the Ocampo
6 action are substantially similar.” (Wilkinson Decl., ¶ 10, Exh. F.)

7 On February 27, 2023, the Court in the *Mapes* Action granted both of Plaintiff Mapes’
8 Motions to Compel discovery. The Court also issued sanctions against Nor-Cal Beverage totaling
9 \$22,970 for its abuse of the discovery process and ordered Nor-Cal Beverage to produce further
10 discovery by May 31, 2023. (Wilkinson Decl., ¶ 11, Exh. G.)

11 On or around March 31, 2023, the Court granted Defendant’s Motion, staying all future
12 proceedings of the case until further order by the Court, although Defendant remained obligated to
13 produce the discovery that Plaintiff Mapes had previously compelled. (Wilkinson Decl., ¶ 13.)

14 On May 31, 2023, Defendant produced Supplemental Responses to Plaintiff’s Special
15 Interrogatories seeking putative class contact information, indicating that Defendant agreed to engage
16 in the *Belaire-West* opt-out process pursuant to the court order. (Wilkinson Decl., ¶ 15.) Defendant
17 also produced Supplemental Responses to a portion of Plaintiff Mapes’ Requests for Production of
18 Documents, whereas the parties stipulated to extend Defendant’s deadline to produce time and pay
19 data for the putative class. (*Ibid.*) On June 14, 2023, Defendant produced the putative class time and
20 pay data sought by Plaintiff’s Requests for Production of Documents. (*Id.*, ¶ 16.)

21 On June 16, 2023, the parties in the *Mapes* Action finalized drafts of the *Belaire-West* notice
22 documents and agreed to procure bids to initiate the opt-out notice protocol. (Wilkinson Decl., ¶ 17.)

23 **III. ARGUMENT**

24 **A. Coordination Is Warranted and Necessary Because the Two Actions Are Complex,** 25 **Pending in Different Courts, and Share Common Questions of Law and Fact.**

26 Coordination is the procedure to employ to bring together two or more complex cases sharing
27 common questions of fact or law pending in “different courts” or counties for pretrial proceedings
28

and possibly trial. (Code Civ. Proc. § 404.) Here, there are two complex actions against Defendant Nor-Cal Beverage pending in two different courts as follows:

1. *Ocampo v. Nor-Cal Beverage Co., Inc.*, Case No. 30-2021-01226173-CU-OE-CXC pending in the Orange County Superior Court (“*Ocampo* Action”), and
2. *Mapes v. Nor-Cal Beverage Co., Inc., et al.*, Case No. CV2022-1076 pending in the Yolo County Superior Court (“*Mapes* Action”).

(Wilkinson Decl., ¶ 1, Exhs. A, C.)

Coordination thus is the proper method because these two cases are pending in “different courts.” As discussed below, the factors for coordination are satisfied here. Bringing these actions together in a single court for pretrial proceedings and trial will serve the ends of justice by preventing inconsistent rulings and ensuring that all parties’ interests are fairly represented in the proceedings.

1. The Actions Are Complex and Properly Suited for Coordination.

A complex action is defined as litigation that “requires exceptional judicial management to avoid placing unnecessary burdens on the court of the litigants and to expedite the case, keep costs reasonable, and promote effective making by the court, the parties, and counsel.” (Cal. Rules of Court, rule 3.400(a).) To determine whether an action is complex, courts consider whether the action is likely to involve, *inter alia*, (1) numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve; (2) management of a large number of witnesses or a substantial amount of documentary evidence; (3) management of a large number of separately represented parties; (4) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court; or (5) substantial post-judgment judicial supervision. (Cal. Rules of Court, rule 3.400(b).)

Here, the *Ocampo* and *Mapes* Actions (the “Actions”) are each complex. Both Actions meet the complex case factors pursuant to California Rules of Court, rule 3.400(b). (Wilkinson Decl., ¶¶ 3-4.) Fully prosecuting both actions will involve complex discovery. Moreover, the number of witnesses and amount of evidence favor coordination because Petitioner believes, and the parties have already established, that these actions involve over 1,200 putative class members (i.e., current and former employees of Nor-Cal Beverage). (See *id.*, Exh. E at p. 1.) Additionally, due to the large

1 classes, each of these actions faces the risk that independently represented individuals represented by
2 counsel may seek to intervene. Finally, both actions will require substantial court supervision
3 following settlement or judgment. Courts will need to ensure that, in the event uncashed checks result
4 from a monetary judgment or settlement, the requirements of the newly amended Code of Civil
5 Procedure section 384 are followed. This would require substantial post-judgment supervision as an
6 amended judgment will need to be entered and the Court will need to ensure uncashed checks are
7 distributed to the appropriate *cy pres* recipient. (See Code Civ. Proc. § 348.)

8 Thus, these cases are complex and properly suited for coordination.

9 2. Coordination of These Actions Is Proper and Will Promote the Ends of Justice.

10 Coordination is appropriate if it will “promote the ends of justice.” (Code Civ. Proc. § 404.1.)
11 In making this determination, the Court takes into consideration the following factors: (1) whether the
12 common question of fact or law predominates and is significant to the litigation; (2) the convenience
13 of parties, witnesses, and counsel; (3) the relative development of the actions and the work product of
14 counsel; (4) the efficient utilization of judicial resources; (5) the calendar of the courts; (6) the
15 disadvantages of duplicative and inconsistent rulings, orders or judgment; and (7) the likelihood of
16 settlement of the actions without further litigation if coordination is denied. (Cal. Civ. Proc. Code
17 § 404.1; see also *McGhan Med. Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 812.) The object
18 of coordination is to promote judicial efficiency and economy by providing for the unified
19 management of both the pretrial and trial phases of the coordinate cases. (*Citicorp North America,*
20 *Inc. v. Superior Court* (1989) 213 Cal.App.3d 563, 572, n.3.)

21 The factors provided by the California Code of Civil Procedure section 404.1 strongly favor
22 coordination of these actions. The interest of justice also will be served with coordinating the two
23 actions in the same court. First, there are nearly identical common questions of law and fact that
24 predominate. Each of these cases allege the same core issues involving Defendant Nor-Cal
25 Beverage’s wage and hour practices and alleged violations of the California Labor Code.
26 Specifically, both cases allege Defendant’s failure to pay all wages earned, failure to pay meal period
27 premiums, failure to pay rest period premiums, failure to pay overtime, failure to provide accurate
28 wage statements, failure to reimburse necessary business expenses and failure to pay minimum

1 wages. (Wilkinson Decl., ¶¶ 2, 4, Exhs. A, C.) As both wage and hour class actions are against the
2 exact same company, Nor-Cal Beverage, there will be significant legal overlap regarding discovery
3 and difficult legal disputes. If the actions are not coordinated, the courts will be required adjudicate
4 the same facts and circumstances in each matter in different courts and before different judicial
5 officers—ultimately wasting vital judicial resources and causing confusion between the court
6 systems.

7 Second, the convenience of the parties, witnesses, and counsel will be served if these cases
8 are coordinated. Currently, these cases are pending in two different courthouses, in different counties.
9 (Wilkinson Decl., ¶ 1.) However, with coordination, written discovery and any further party and non-
10 party depositions can be streamlined, therefore increasing efficiencies. For example, as the parties in
11 the *Ocampo* Action move for preliminary approval of a class and PAGA settlement, the Court in the
12 *Mapes* Action ordered the parties to engage in the *Belaire-West* protocol to facilitate the discovery of
13 putative class contact information. (See Wilkinson Decl., ¶¶ 11, 15, 17.) A unified proceeding would
14 eliminate duplicative discovery protocols such as the *Belaire-West* process in addition to duplicative
15 proceedings more generally. This will benefit the parties, their counsel, and potential witnesses since
16 the two matters so closely resemble one another.

17 Third, judicial facilities and resources will be more efficiently utilized if the cases are
18 coordinated because there will be a single judge in a single courtroom to address any legal issues as
19 well as all pre-trial motions, and to manage the large and overlapping issues in both cases. In
20 contrast, having these two Actions split between different courts would unnecessarily require
21 utilizing significant amounts of judicial and court staff time, as well as unreasonably increase the
22 time and expense of the litigation for the parties. Coordination will also obviate the risk of
23 inconsistent rulings and avoid the necessity of multiple petitions for appellate review; it will therefore
24 save valuable judicial resources, as well as free up courtrooms for other matters.

25 Fourth, coordination will protect putative class members who are part of the tentative *Ocampo*
26 settlement because it will allow all parties to be in one forum, and any issues of potential wrongdoing
27 and improper strategic conduct the settling parties in the *Ocampo* Action will be decided by one
28 judicial officer overseeing both cases. Moreover, it will enable another class representative aided by

competent counsel to advocate in their interests before the court. Plaintiff Mapes already has reason to suspect the *Ocampo* settlement is not in the best interest of class members. By Plaintiff Ocampo's own admission, Nor-Cal Beverage engaged in a *Pickup Stix* campaign in June and July 2022 to negotiate a total of \$1,360,00 in individual settlements with current and former employees prior to entering a gross class and PAGA settlement with Plaintiff Ocampo for a mere \$390,000. (See Wilkinson Decl., Exh. E at pp. 1, 3.) This highly unusual proactive conduct by Nor-Cal Beverage, as well as Plaintiff Ocampo's willingness to accept such a low gross settlement, both demand scrutiny to ensure that the settlement is fair and adequate when weighed against the class release being sought. If coordination is denied, any motion for settlement approval could be subject to challenge and may thereby result in protracted motion practice. Thus, coordination will both increase the chances of greater cooperation among all interested parties and decrease the likelihood of delay and litigation.

Fifth, Plaintiff Mapes and his counsel are well-suited to zealously advocate for current former employees of Nor-Cal Beverage because Plaintiff Mapes has obtained substantial discovery from Nor-Cal Beverage that will enable him to evaluate the adequacy of the pending *Ocampo* settlement and properly value the claims. (See Wilkinson Decl., ¶¶ 5-6, 11, 15-17.) Additionally, Plaintiff Mapes and Nor-Cal Beverage are presently in the process of initiating the *Belaire-West* protocol for the disclosure of putative class members' contact information. (*Id.*, ¶¶ 15, 17.) Indeed, Plaintiff Mapes has evidently engaged in more formal discovery motion practice than Plaintiff Ocampo. (Compare Wilkinson Decl., ¶¶ 5-6, 11, 15-17 with *id.*, Exh. B [Ocampo Docket] [showing no discovery motion practice for the entirety of the case].) While Plaintiff Ocampo asserts in his MPA that the parties engaged in "extensive informal and formal discovery" that involved "direct exchanges of information . . . during the course of settlement negotiations," the moving papers fail to further specify at all what formal discovery was conducted and what information was exchanged. (See Wilkinson Decl., Exh. E at pp. 3, 12-13.) Thus, given the *Ocampo* parties' unwillingness to specify what discovery was conducted to reach the parties' class and PAGA settlement, it remains possible that Plaintiff Mapes presently possesses *more* evidence than Plaintiff Ocampo that would be relevant to valuing Plaintiff Ocampo's own claims. Thus, the coordination of the *Mapes* and *Ocampo* Actions

1 would benefit the *Ocampo* class by enabling a ready, willing, and capable class representative to
2 advocate on their behalf.

3 In sum, given the volume of claims, documents, and evidence, and the potential number of
4 parties and attorneys involved, a significant amount of costs, attorneys' fees, and judicial resources
5 will be saved through these efforts. Overall, taking into consideration the above-stated factors,
6 coordination is appropriate, and the ends of justice will be served. Accordingly, the Petition should be
7 granted.

8 **B. These Actions Should Be Stayed Pending Determination of Whether Coordination Is**
9 **Appropriate.**

10 Pursuant to California Code of Civil Procedure section 404.5 and California Rules of Court,
11 rule 3.515, Petitioner requests that the coordination motion judge order a stay of proceedings in the
12 *Ocampo* Action (while allowing the present stay in the *Mapes* Action to remain) pending the
13 determination of whether coordination is appropriate. The request for a stay is made on the grounds
14 that the stay order is necessary and appropriate to effectuate the purposes of coordination outlined
15 above and in California Code of Civil Procedure section 404.1. To avoid burdens of time and expense
16 to all the parties, avoid inconsistent rulings and judgments, and determine if Defendant's conduct in
17 the *Ocampo* Action was designed to elicit a reverse auction, the Court must ensure these actions are
18 coordinated and proceed together.

19 **IV. CONCLUSION**

20 For the foregoing reasons, Petitioner respectfully requests that these cases be coordinated for
21 all purposes. Petitioner further requests that the *Ocampo* Action and the *Mapes* Action be stayed
22 pending the determination of this Petition for Coordination.

23
24 DATED: July 5, 2023

JUSTICE LAW CORPORATION

25
26 By: 

Douglas Han
Shunt Tatavos-Gharajeh
William Wilkinson
Attorneys for Petitioner

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