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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 01 2021

BY Jacqueline Harness
JACQUELINE HARNESS, DEPUTY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN BERNARDINO**

13 **Stephen Noer, an individual;**

14 Plaintiff,

15 vs.

16 **Five Star Food Containers, Inc., a**
17 **California corporation; Larry Luc, an**
18 **individual; and Does 1-10, inclusive;**

19 Defendant.

CASE NO. **CIV SB 2116131**

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Overtime Wages (Lab. Code §§ 510 and 1198);
- 2) Failure to Timely Pay Wages During Employment (Lab. Code §§ 204, 210)
- 3) Failure to Timely Pay Wages After Employment (Lab. Code §§ 201-203);;
- 4) Failure to Provide and Maintain Accurate Records (Lab. Code §§ 226(a)/(f)/(h), 226.3, and 1174(d));
- 5) Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*); and
- 6) PAGA Penalties (Labor Code § 558, 2698, *et seq.*)

INDIVIDUAL COMPLAINT FOR:

- 1) Retaliation for Filing Complaint in Violation of California OSHA (Labor Code § 6310);
- 2) Retaliation for Refusal to Work in Violation of Health and Safety Standards under California OSHA (Labor Code § 6311);
- 3) Unlawful Retaliation (Labor Code § 1102.5); and
- 4) Wrongful Termination in Violation of Public Policy (*Tameny*);

Demand for Jury Trial

FAXED

1 Plaintiff Stephen Noer, hereby brings this action, on behalf of himself and all similarly situ-
2 ated individuals, and alleges as follows, by and through his counsel of record:

3 **PARTIES**

4 1. Plaintiff Stephen Noer (“Noer”) is a resident of the County of San Bernardino.
5 Starting from February 24, 2020, Mr. Noer worked for Defendant Five Star Food Containers, Inc.
6 as a warehouse worker until his wrongful termination on October 24, 2020. Mr. Noer was paid an
7 hourly wage of \$12.00 to \$13.75 per hour.

8 2. Defendant Five Star Food Containers, Inc. (“Five Star”) is a California corporation
9 with its principal business location at 250 Eastgate Road, Barstow, CA 92311.

10 3. Defendant Larry Luc (“Luc”) is the Chief Executive Officer of Five Star, a resident
11 of the County of San Bernardino, and upon information and belief, is the owner of Five Star. Since
12 Mr. Luc is an owner, managing agent, director, or officer of Five Star, and because he caused or di-
13 rected the acts described herein, he is personally liable for the Labor Code violations and PAGA
14 penalties complained herein per Labor Code § 558.1.

15 4. Mr. Noer is not currently aware of the names and true identities of Does 1-10 (here-
16 inafter “Defendants,” collectively with Five Star and Luc). Accordingly, Plaintiff brings this suit
17 against them by fictitious names pursuant to California Code of Civil Procedure section 474. Mr.
18 Noer reserves the right to amend this complaint to show their true names and capacities once this
19 information is ascertained. Each Doe defendant is responsible for the damages alleged pursuant to
20 each of the causes of action asserted, either through its own conduct, or vicariously through the
21 conduct of others. All further references in this complaint to the named Defendant includes the fic-
22 titiously named defendants.

23 5. At all times alleged herein, except as otherwise noted herein, Defendants partici-
24 pated in the acts alleged herein and/or were the agents, servants, employees, or representatives of
25 the other Defendants. At all times relevant to this complaint, Defendants were acting within the
26 course, scope, and authority of their agency and employment such that the acts of one defendant
27 are legally attributable to the other Defendants. Defendants, in all respects, acted as employers
28 and/or joint employers of Plaintiff in that each of them exercised control over the wages, hours,

1 and/or working conditions of Plaintiff. Moreover, the conduct of every defendant was ratified by
2 each other defendant.

3 VENUE AND JURISDICTION

4 6. This Court has subject matter jurisdiction over any and all causes of action asserted
5 herein pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
6 Procedure sections 88 and 410.10 by virtue of the fact that this is a civil action in which the matter
7 in controversy, not including attorneys' fees, interests, and costs, exceeds \$25,000, and because
8 each cause of action asserted arises under the laws of the State of California or is subject to adjudi-
9 cation in the courts of the State of California.

10 7. This Court has personal jurisdiction over Defendant because Defendant is either res-
11 ident of or have caused injuries in the County of San Bernardino and State of California through
12 their acts, and by their violations of the California Labor Code, California state common law, and
13 California Business & Professions Code sections 17200, *et seq.* Venue is proper in San Bernardino
14 County, pursuant to Code of Civil Procedure section 395(a), because Defendant does business in
15 San Bernardino County and because Mr. Noer resided, earned wages, and suffered the harms set
16 forth herein in San Bernardino County at all times relevant to this complaint.

17 FACTUAL ALLEGATIONS

18 *Defendants Fail To Pay Proper Overtime Wages*

19 8. At all times relevant to this complaint, Defendants implemented a company-wide
20 policy that failed to pay Plaintiff and Class Members for all earned overtime wages.

21 9. Specifically, Defendants' formal policies state that overtime wages will *only* be paid
22 for time worked in excess of *10 hours* per day. Defendants do not authorize overtime payments for
23 hours worked in excess of eight hours per day or hours worked in excess of forty hours per week.
24 Upon information and belief, Defendants also do authorize double-time payments when earned by an
25 employee.

26 10. Plaintiff and/or Class Members regularly worked more than 8 hours per day yet were
27 not paid with all overtime wages for hours worked over 8 hours per day or 40 hours per week yet were
28 not paid overtime for this work pursuant to Defendants' written policies. Plaintiff and/or Class

1 Members also worked more than 12 hours per day or in excess of 8 hours on the seventh consecutive
2 day in a workweek yet were not pay with double time wages for such work pursuant to Defendants'
3 written policies.

4 ***Mr. Noer is Forced to Work in Unsafe Conditions by Defendants***

5 11. Defendants run a manufacturing plant, where Styrofoam is heated and molded into
6 food containers. When the main ingredient of Styrofoam, polystyrene, is heated during this manufac-
7 turing process, it emits styrene: "[t]ypical sources of industrial styrene emissions are those facilities
8 producing styrene, polystyrene, other plastics, synthetic rubber, and resins." U.S. Department of
9 Health and Human Services, Public Health Service, Toxicological profile for Styrene (2010) (cita-
10 tions omitted). "Styrene is known to be absorbed following inhalation, oral, and dermal contact." *Id.*
11 (citations omitted). "The most significant exposure route in [workplace] settings is [] likely by inha-
12 lation. The industries with the highest potential exposure are probably the reinforced plastics facto-
13 ries, boatbuilding facilities, and polystyrene factories." *Id.*

14 12. Negative health effects from exposure to styrene emissions includes irritation of the
15 skin, eyes, and the upper respiratory tract (i.e., nose and throat). Acute exposure may also result in
16 gastrointestinal effects, such as nausea. *Id.* Chronic exposure affects the central nervous system
17 showing symptoms such as headaches, dizziness, impaired memory, and feeling "drunk." *Id.*

18 13. Accordingly, the U.S. Occupational Safety and Health Administration regulates sty-
19 rene as a toxic or hazardous air contaminant. 29 C.F.R. 1910.1000, TABLE Z-2. An employee's ex-
20 posure to styrene is limited to no more than an average of 100 parts per million during a regular 8-
21 hour workday. *Id.* Compliance must first be achieved with administrative or engineering controls
22 whenever feasible. 29 C.F.R. 1910.1000(e). "Ventilation is one of the most important engineering
23 controls available to the industrial hygienist for improving or maintaining the quality of the air in the
24 occupational work environment. Broadly defined, ventilation is a method of controlling the environ-
25 ment with air flow." United States Department of Labor, *available at* www.osha.gov/ventilation.
26 When it is not feasible to achieve compliance through administrative or engineering controls, protec-
27 tive equipment or other protective measures must be utilized to prevent employee exposure to air
28 contaminants from exceeding the prescribed limits. *Id.*

1 14. However, in clear disregard for its employees' welfare, Defendants' facility utilized
2 little to no working ventilation throughout Plaintiff's employment. Indeed, to the best of Plaintiff's
3 knowledge, Defendants' heating, ventilation, and air conditioning unit ("HVAC") was *never* opera-
4 ble because it was at all times broken, disconnected, or physically obstructed.

5 15. As a result, Plaintiff was constantly subjected to hazardous fumes emitting from the
6 heated Styrofoam, which caused him to suffer from frequent coughing, headaches, nosebleeds, and
7 shortness of breath. The fumes were so ever present that Plaintiff suffered from prolonged episodes
8 of severe nosebleeds that lasted for *a week* at a time at least once every few weeks, during which
9 Plaintiff's nose repeatedly bled multiple times per day for periods of twenty minutes at a time.

10 16. Beginning in or about mid to late July of 2020, Plaintiff began verbally complaining
11 about these hazardous working conditions and their deleterious effects on his health to his manager,
12 Alan Tan, and later via repeated personal and group text messages shared among Defendants' em-
13 ployees and supervisors. However, Mr. Tan disregarded Plaintiff's complaints and failed to address
14 the inadequate ventilation issue. As a result, Plaintiff continued working in these hazardous condi-
15 tions and continued suffering adverse health effects.

16 ***Mr. Noer Files Multiple Workplace Safety Complaints***
17 ***with Cal-OSHA and a Local Government Agency***

18 17. After becoming fed up with management's refusal to address his complaints, Plain-
19 tiff decided to complain to governmental authorities regarding Defendants' lack of safety.

20 18. In late August or early September of 2020, Plaintiff for the first time contacted the
21 California Department of Industrial Relations, Division of Occupational Safety and Health ("Cal-
22 OSHA") to complain about Defendants' operations. However, after attempting to explain Defend-
23 ants' hazardous workplace conditions, Cal-OSHA advised Plaintiff to contact local government
24 agency instead.

25 19. Over the course of several weeks, Plaintiff continued contacting Cal-OSHA in an at-
26 tempt to file his complaint. During this time, Plaintiff also contacted and made an identical com-
27 plaint with the City of Barstow and/or the County of San Bernardino. Then on September 16, 2020,
28 Cal-OSHA finally recorded Plaintiff's workplace safety complaint (Complaint No. 1666732)

1 alleging that Defendants' operations caused hazardous conditions by failing to properly ventilate
2 the Styrofoam fumes due to insufficient ventilation and engineering controls.

3 20. Meanwhile, Plaintiff continued to suffer ill effects from the lack of ventilation and on
4 September 18, 2020, smoke from Defendants' facility caused Plaintiff to become nauseated and begin
5 severely vomiting at work. Plaintiff's condition was so severe that he was forced to return home at
6 lunch. Plaintiff informed his manager, Mr. Tan, of the same via a personal text message stating, "*I*
7 *won't be coming back in[,] the smoke made me throw up.*" Rather than address the actual problem with
8 the ventilation, Mr. Tan put the onus on *plaintiff* stating, "We recommend everyone put on a mask
9 while you working."

10 21. Based on information and belief, an inspection of Defendants' premises was con-
11 ducted on October 2, 2020 by the City of Barstow. Shortly thereafter, Plaintiff received a group text
12 message from Mr. Tan stating that: "*We recently ha[d] an inspector c[o]me and inspect[] ou[r] ware-*
13 *house for safety. Every thing is good.*". Then, Plaintiff received a letter sent by Cal-OSHA on October
14 26, 2020 stating that: (1) it had received his complaint; (2) it had been advised by Defendant that
15 the hazards were identified and corrected or determined not to exist; (3) and it enclosed a copy of
16 Defendants' response.

17 22. The enclosed response from Defendant was an email from Mr. Tan to Cal-OSHA,
18 dated October 13, 2020, which stated that based on a complaint the "City of Barstow came to in-
19 spect our [ventilation] system on Friday 10/2/2020." To the best of Plaintiff's knowledge, Mr. Tan
20 then misrepresented to the Cal-OSHA that two air vent lines had been disconnected, but were re-
21 paired, and attached several photos purportedly showing the vent lines being reattached with duct
22 tape. Based on this information, Cal-OSHA informed Plaintiff that it would be closing his workplace
23 safety complaint.

24 ***Defendant Retaliates Against Mr. Noer***

25 23. However, based on Plaintiff's experience, the unsafe health conditions at his work-
26 place did not sufficiently improve, so on October 24, 2020 (while Plaintiff was still waiting to re-
27 ceive Cal-OSHA's response letter) Plaintiff texted Mr. Tan once again asking, "*[w]hen we gonna get*
28 *clean air to breath[e?]*" "*Like proper ventilation we're already suppose[d] to have but not provided.*" In

1 response, Defendants *suspended Plaintiff* with Mr. Tan responding, “[a]lright, you can be off til we
2 have some one check our ventilation system that i[t] work[s] properly.”

3 24. Defendants immediately removed Plaintiff from the work schedule without pay. De-
4 fendants’ records show that Mr. Noer was not scheduled past October 24, 2020 and Defendant
5 never assigned Plaintiff another working hour after October 24, 2020.

6 25. Approximately one week later, on November 2, 2020, Plaintiff personally texted Mr.
7 Tan to ask if he had been terminated in response to his complaint: “[A]m I gonna get put back on or
8 [get] fired I need to know [what] is going on . . . I have responsibilities and a life to take care of how long am
9 I gonna be off the schedule without pay.”

10 26. Mr. Tan responded to say that Mr. Noer would not be returned to the scheduling
11 and effectively admitted that Defendant had falsely represented to OSHA that the ventilation sys-
12 tem had already been repaired: “Need more time to get the pipe connector [r]eplace[d]. The one we have is
13 not the right size. I ordered the parts. I can’t put you back when you don’t feel comfortable to work with the
14 pipe issue. Company not offer paid leave. You can try unemployment for the time you are off.”

15 27. About another week after that, on November 8, 2020 and November 12, 2020, Plain-
16 tiff texted Mr. Tan: “So it’s been three weeks waiting for a part how long do I have to wait[?]” Mr. Tan
17 responded: “I don’t have the update on that yet.” Plaintiff was never scheduled again.

18 28. In reality, Defendant terminated Plaintiff’s employment because of his repeated
19 complaints regarding safety and the fact that he had the temerity to stand up for himself and his
20 coworkers by filing multiple complaints, including a Cal-OSHA complaint. Upon information and
21 belief, at least one other employee of Defendants was retaliated against by being taken off schedule
22 for a period of time after he complained about safety concerns arising out of Defendants’ manufac-
23 turing process in the same group messages.

24 **CLASS ACTION ALLEGATIONS**

25 29. Class Definitions: Plaintiff brings this action on behalf of himself and as a class action
26 on behalf of the following defined Class:

Non-Exempt Hourly Class:

All current and former non-exempt, hourly employees of Defendants who worked at least one shift in California during the four years immediately preceding the filing of this complaint until the date of trial (“Class”).

30. Numerosity: The Class Members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff and the Class at this time; however, the class is estimated to be greater than 50 individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

31. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest, and Plaintiff’s claims (or defenses, if any) are typical of all Class Members.

32. Commonality: The Class’ claims involve substantially similar questions of law and fact that predominate over questions affecting individual Class Members. These common questions include, but are not limited to, the following:

a. Whether Defendants had a policy of failing to pay all required overtime pay to Class Members;

b. Whether Defendants had a practice of failing to pay all required overtime pay to Class Members;

c. Whether Defendants had a policy of failing to pay all required double-time pay to Class Members;

d. Whether Defendants had a practice of failing to pay all required double-time pay to Class Members;

e. Whether Defendants failed to provide Class Members with complete and accurate wage statements as required by Labor Code § 226;

f. Whether Defendants failed to pay Class Members all wages due on regular pay days established during their;

g. Whether Defendants failed to pay Class Members all wages due upon separation;

h. Whether Defendants engaged in unlawful and unfair business

practices in violation of Business & Professions Code §§ 17200, *et seq.*;

i. Whether Defendants are liable for penalties under the Private Attorney's General Act for the foregoing violations.

33. Common methods of proof exist for determining these issues on a class-wide basis, including but not limited to, Defendants' written policies, Defendants' time-keeping records, Defendants' payroll and payment records; and oral testimony from Plaintiff, certain Class Members, and Defendants' corporate designees.

34. There is a well-defined community of interest among the Class and Class Members are readily ascertainable. The proposed Classes satisfies numerosity, typicality, adequacy, and superiority requirements.

35. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest and typicality of claims. There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately represent and protect the interests of the Class and have retained as counsel trial lawyers who are competent and skilled in complex and class action litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

36. Superiority: Questions of law and fact common to the Class predominate over the questions affecting only individual members of the Class and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford such individual litigation, the court system would be

1 overwhelmed by the individual lawsuits. In addition, individualized litigation increases the delay and
2 expense to all parties and to the court system resulting from the complex legal and factual issues of
3 this case. Individualized litigation also presents a potential for inconsistency or contradictory judg-
4 ments. By contrast, the class action device presents far fewer management difficulties; it allows the
5 hearing of claims which might otherwise go unaddressed because of the relative expense of bringing
6 individual lawsuits, and it provides the benefits of single adjudication, economies of scale, and com-
7 prehensive supervision by a single court.

8 37. Public Policy Considerations: Employers in the State of California routinely violate
9 employment and labor laws. Current and former employees are often afraid to assert their rights due
10 to the power wielded by employers over their livelihoods. Class actions provide the Class Members
11 who are not named in the complaint with a type of anonymity that allows for the vindication of their
12 rights while simultaneously protecting their privacy and providing for a method of adjudication that
13 allows individuals to assert claims that could not be brought individually due to cost and other public
14 policy considerations.

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 ***California Labor Code §§ 510 and 1198***

18 ***Unpaid Overtime***

19 **(Plaintiff and Class Against Defendants)**

20 38. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in
21 this paragraph, all the allegations of this Complaint.

22 39. California Labor Code § 510, 1198, and Industrial Wage Order No. 1 provide that it is
23 unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or
24 two-times that person's regular rate of pay, depending on the number of hours worked by the person
25 on a daily or weekly basis; namely, at the rate of time and one-half for hours worked in excess of eight
26 hours in a day or more than forty hours in a workweek, and the rate of double time for hours worked
27 in excess of 12 hours per day or in excess of 8 hours on the seventh consecutive day in a workweek.

28 40. Plaintiff and/or the Class regularly worked shifts in excess of eight hours in a day or

1 in excess of forty hours per week. However, Plaintiff and the Class were not paid overtime premiums
2 for all of the hours worked in excess of eight hours in a day because Defendant had a policy and prac-
3 tice of only paying overtime for time worked in excess of 10 hours per day.

4 41. Plaintiff and/or the Class regularly worked shifts in excess of 12 hours per day or in
5 excess of 8 hours on the seventh consecutive day in a workweek. However, Plaintiff and the Class
6 were not paid overtime premiums for all of the hours worked in excess of eight hours in a day because
7 Defendant had a policy and practice of only paying overtime for time worked in excess of 10 hours
8 per day.

9 42. Defendant knew or should have known that that Plaintiff and/or the Class worked
10 overtime hours but failed to pay the required overtime wages to Plaintiff and the Class.

11 43. Pursuant to Labor Code § 1194, Plaintiff and the Class are entitled to recover the un-
12 paid overtime compensation, as well as interest, costs, and attorneys' fees, and applicable civil pen-
13 alties.

14 **SECOND CAUSE OF ACTION**

15 ***California Labor Code §§ 204, 210***

16 ***Wages Not Timely Paid During Employment***

17 ***(Plaintiff and Class Against Defendants)***

18 44. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in
19 this paragraph, all the allegations of this Complaint.

20 45. Labor Code § 204 provides that all wages, other than those mentioned in Section 201
21 and 202, are due and payable twice during each calendar month, on days designated in advance by
22 the employer as regular paydays.

23 46. During the relevant period, Defendant willfully failed to pay Plaintiff and the Class the
24 earned and unpaid overtime wages set forth above upon Defendants' regularly schedule paydays.

25 47. Defendants' failure to timely pay Plaintiff and the Class their earned overtime wages
26 violates Labor Code § 204. Plaintiff and the Class are therefore entitled to recover from Defendants
27 statutory penalties in the amount of \$100 per initial violation per employee and \$200 per subsequent
28 violation per employee under Labor Code § 210.

1 **THIRD CAUSE OF ACTION**

2 ***California Labor Code §§ 201-203***

3 ***Wages Not Timely Paid During Employment***

4 ***(Plaintiff and Class Against Defendants)***

5 48. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in
6 this paragraph, all the allegations of this Complaint.

7 49. Labor Code sections 201 and 202 provide that if an employer discharges an employee,
8 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
9 employee voluntarily leaves his or her employment, his or her wages shall become due and payable
10 no later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous
11 notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the
12 time of quitting.

13 50. During the relevant period, Defendant willfully failed to pay Plaintiff and the Class the
14 earned and unpaid wages set forth above, including but not limited to overtime wages, either at the
15 time of discharge, or within seventy-two hours of leaving Defendants' employ.

16 51. Defendants' failure to timely pay Plaintiff and the Class earned overtime wages vio-
17 lates Labor Code sections 201-202. Plaintiff and the Class are therefore entitled to recover from De-
18 fendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up
19 to a 30-day maximum penalty under Labor Code § 203.

20 **FOURTH CAUSE OF ACTION**

21 ***California Labor Code § 226***

22 ***Failure to Provide and Maintain Employment Records***

23 ***(Plaintiff and Class Against Defendants)***

24 52. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in
25 this paragraph, all the allegations of this Complaint.

26 53. Labor Code § 226(a) provides that every employer, semimonthly or at the time of each
27 payment of wages, shall furnish his or her employees an accurate itemized statement in writing, in-
28 cluding, but not limited to; gross and net wages earned, total hours worked, applicable rates of pay,

1 and deductions.

2 54. Because Defendant knowingly failed to provide compliant wage statements to Plaintiff
3 and the Class by failing to record the correct overtime rate and overtime compensation earned, it has
4 violated Labor Code § 226. As a result of Defendants' failure and refusal to comply with Labor Code
5 § 226, Plaintiff and the Class are entitled to recover to the actual damages caused by Defendants'
6 failure to comply with Labor Code § 226(a) or an aggregate penalty not to exceed \$4,000 per em-
7 ployee, plus injunctive relief and reasonable attorneys' fees and costs.

8 **FIFTH CAUSE OF ACTION**

9 ***Violation of California Business & Professions Code §§ 17200, et seq.***

10 ***Unlawful Business Practices***

11 **(Plaintiff and Class Against Defendants)**

12 55. Plaintiff repeats, repleads and incorporates by reference and re-alleges as if fully stated
13 herein each and every allegation set forth above.

14 56. Defendants are each a "person" as defined by California Business & Professions Code
15 sections 17201, as they are either natural persons, corporations, firms, partnerships, joint stock com-
16 panies, associations, or other organizations of persons.

17 57. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlaw-
18 ful and harmful to Plaintiff and the Class, Class Members, and to the general public. Plaintiff and the
19 Class have suffered injury in fact and have lost money as a result of Defendants' unlawful business
20 practices. Plaintiff and the Class seek to enforce important rights affecting the public interest within
21 the meaning of Code of Civil Procedure section 1021.5.

22 58. Defendants' activities, as alleged herein, are violations of California law, and consti-
23 tute unlawful business acts and practices in violation of California Business & Professions Code sec-
24 tions 17200, et seq.

25 59. A violation of California Business & Professions Code sections 17200, et seq. may be
26 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
27 practices have violated state law as described above.

28 60. As a result of the violations of California law herein described, Defendants unlawfully

1 gained an unfair advantage over other businesses. Plaintiff and Class Members have suffered pecuni-
 2 ary loss by Defendants' unlawful business acts and practices alleged herein.

3 61. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff
 4 and Class Members are entitled to restitution of the wages withheld and retained by Defendants dur-
 5 ing a period that commences four years prior to the filing of this complaint; requiring Defendants to
 6 pay all outstanding wages due to Plaintiff and Class Members; and an award of attorneys' fees pur-
 7 suant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award
 8 of costs.

9 **SIXTH CAUSE OF ACTION**

10 ***Labor Code §§ 558, 2698, et seq.***

11 ***Private Attorneys General Act ("PAGA") Penalties***

12 **(Plaintiff and Class Against Defendants)**

13 62. Plaintiff repeats, repleads and incorporates by reference and re-allege as if fully stated
 14 herein each and every allegation set forth above.

15 63. Entitlement to Penalties. Under the California Private Attorneys General Act
 16 ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as
 17 a private attorney general, on behalf of himself and other current or former employees as well as the
 18 general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage
 19 Orders. These penalties are in addition to any other relief available under the Labor Code and are
 20 allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five
 21 percent to the affected employees.

22 64. These penalties may be "stacked" separately for each of Defendants' violations of the
 23 Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17,
 24 n.77 (C.D. June 22, 2012) ("[F]ederal courts applying California law have concluded that stacking is
 25 appropriate."); *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at
 26 *7 (N.D. Cal. June 30, 2016) ("Finally, Plaintiff ignore[s] the potential for stacking of PAGA penal-
 27 ties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e.,
 28 meal and rest breaks, minimum wage and overtime, and workers' compensation.").

65. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, including civil penalties for Defendants’ violations of Labor Code §§ 201-204, 210, 226, 510, 1198 and Industrial Wage Order No. 1, plus attorneys’ fees and costs.

66. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff and the Class may choose to seek certification of the PAGA claims.

67. Labor Code § 2699(a), which is part of PAGA, provides:
Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or themselves and other current or former employees pursuant to the procedures specified in § 2699(a).

68. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:
For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollar (\$200) for each aggrieved employee per pay period for each subsequent violation.

69. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendants and allocated as required by PAGA or other statute, in an amount to be shown at trial subject to the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay period, and \$200 for each subsequent violation per employee per pay period.

70. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from,

1 any other penalty provided in this article) in the amount of \$100 per employee per initial violation of
2 the timely payment requirements of Labor Code § 204 (semimonthly payments) and \$200 per em-
3 ployee for each subsequent violation, plus 25% of the amount unlawfully withheld.

4 71. Plaintiff, the aggrieved employees, and the State of California are entitled to recover
5 the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Order
6 No. 1 as alleged in this Complaint. Plaintiff and the Class are also entitled to an award of attorney’s
7 fees and costs of suit per Labor Code § 2699(g).

8 72. Procedural Requirements Met. On May 28, 2021, Plaintiff filed a notice of claims with
9 the LWDA. As of 65 days from the date of that filing, should the LWDA not take action in response
10 to Plaintiff’s filing, Plaintiff will met all procedural requirements necessary to bring this claim. Ac-
11 cordingly, Plaintiff is entitled to assert this claim. Labor Code § 2699.3(a)(2).

12 **SEVENTH CAUSE OF ACTION**

13 ***Labor Code § 6310***

14 ***Retaliation for Filing Complaint in Violation of California OSHA***

15 **(Plaintiff Against Defendants)**

16 73. Plaintiff repeats, repleads, and incorporates by reference and re-alleges as if fully
17 stated herein each and every allegation set forth above.

18 74. The California Occupational Safety and Health Act (“OSHA”) provides that it is
19 unlawful to “discharge or in any manner discriminate against any employee because the employee
20 has” . . . “[m]ade any oral or written complaint to the [D]ivision [of Occupational Safety and
21 Health], other governmental agencies having statutory responsibility for or assisting the division
22 with reference to employee safety or health, their employer, or their representative.” Labor Code §
23 6310(a).

24 75. As a result of the unsafe manufacturing conditions alleged above, Plaintiff was con-
25 stantly subjected to hazardous fumes emitting from the heated Styrofoam, which caused him to suf-
26 fer from frequent coughing, headaches, nosebleeds, and shortness of breath.

27 76. Plaintiff made repeated complaints to his manager, Mr. Tan, about these hazardous
28 working conditions and deleterious effects on his health. Additionally, on September 16, 2020,

1 Plaintiff filed a workplace safety complaint (Complaint No. 1666732) with the California Depart-
2 ment of Industrial Relations, Division of Occupational Safety and Health (“Cal-OSHA”).

3 77. Based on information and belief, Defendants believed or surmised that Plaintiff
4 made the Cal-OSHA complaint and immediately and indefinitely removed him from the work
5 schedule after October 24, 2020 resulting in his termination.

6 78. Plaintiff’s complaints were bona fide complaints because his exposure to fumes, cou-
7 pled with a lack of required ventilation, created an actual health or safety violation and/or Plaintiff
8 held a good-faith belief that there was a health or safety violation. *See, e.g.*, 8 CCR 5144(a)(1).

9 79. Defendant wrongfully terminated Plaintiff on October 24, 2020 in retaliation for his
10 complaints and the filing the OSHA complaint. Plaintiff’s complaints were a substantial motivating
11 reason for Defendants’ decision to discharge him. In fact, Defendant cited Plaintiff’s complaint as
12 the reason, stating: “*I can’t put you back when you don’t feel comfortable to work with the pipe issue.*”

13 80. As a proximate result of Defendants’ conduct, Plaintiff has suffered and continues to
14 suffer special damages in an amount subject to proof at trial.

15 **EIGHTH CAUSE OF ACTION**

16 ***Labor Code § 6311***

17 ***Retaliation for Refusal to Work in Violation of***

18 ***Health and Safety Standards under California OSHA***

19 **(Plaintiff Against Defendants)**

20 81. Plaintiff repeats, repleads, and incorporates by reference and re-alleges as if fully
21 stated herein each and every allegation set forth above.

22 82. The California Occupational Safety and Health Act (“OSHA”) further provides that
23 “[n]o employee shall be laid off or discharged for refusing to perform work in the performance of
24 which this code, including Section 6400, any occupational safety or health standard, or any safety
25 order of the division or standards board will be violated, where the violation would create a real and
26 apparent hazard to the employee or their fellow employees.” Labor Code § 6310(a).

27 83. “Any employee who is laid off or discharged in violation of this section or is otherwise
28 not paid because the employee refused to perform work in the performance of which this code, any

1 occupational safety or health standard, or any safety order of the division or standards board will be
2 violated and where the violation would create a real and apparent hazard to the employee or their
3 fellow employees shall have a right of action for wages for the time the employee is without work as
4 a result of the layoff or discharge.” *Id.*

5 84. Plaintiff made repeated complaints to Defendants that he was experiencing adverse
6 physical symptoms and therefore not comfortable working due to the unsafe working conditions
7 caused by exposure to hazardous fumes and lack of required ventilation. As a result, Defendant re-
8 moved Plaintiff from the work schedule without pay and suggested he seek unemployment benefits.
9 Defendants claimed Plaintiff could be rescheduled to work after repairs were made, but Defendants
10 never returned Plaintiff to the work schedule while continually rebuffing Plaintiff’s requests for up-
11 dates—resulting in Plaintiff’s termination.

12 85. Upon information and belief, Defendants never remediated the ventilation issue.

13 86. As a proximate result of Defendants’ conduct, Plaintiff has suffered and continues to
14 suffer special damages in an amount subject to proof at hearing.

15 **NINTH CAUSE OF ACTION**

16 ***Labor Code § 1102.5***

17 ***Unlawful Retaliation***

18 87. Plaintiff repeats, repleads, and incorporates by reference and re-alleges as if fully
19 stated herein each and every allegation set forth above.

20 88. California law prohibits employers from retaliating against employees who raise com-
21 plaints internally or externally to governmental agencies regarding information that the employee
22 reasonably believes violates state or federal law, rule, or regulation. Labor Code § 1102.5 (“An em-
23 ployer, or any person acting on behalf of the employer, shall not retaliate against an employee for
24 disclosing information, or because the employer believes that the employee disclosed or may disclose
25 information, to a government or law enforcement agency, to a person with authority over the em-
26 ployee or another employee who has the authority to investigate, discover, or correct the violation or
27 noncompliance, or for providing information to, or testifying before, any public body conducting an
28 investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information

discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.").

89. Plaintiff made repeated complaints to his manager, Mr. Tan, about the aforementioned hazardous working conditions and deleterious effects on his health. Plaintiff reasonably believed these working conditions violated state or federal law, rule, or regulation as complained of herein.

90. Additionally, on September 16, 2020, Plaintiff filed a workplace safety complaint (Complaint No. 1666732) with the California Department of Industrial Relations, Division of Occupational Safety and Health ("Cal-OSHA"). Plaintiff had reasonable cause to believe that the information disclosed a violation of law or noncompliance with regulation. *See, e.g.*, 8 CCR 5144(a)(1).

91. Based on information and belief, Defendant surmised that Plaintiff made the Cal-OSHA complaint and promptly and indefinitely removed him from the work schedule after October 24, 2020. Defendant wrongfully terminated Plaintiff on October 24, 2020 in retaliation for his complaints and the filing the OSHA complaint. Plaintiff's complaints were a substantial motivating reason for Defendants' decision to discharge him.

92. As a proximate result Defendants' conduct, Plaintiff has suffered and continues to suffer special damages in an amount subject to proof at hearing.

93. Defendants' conduct has been intentional, deliberate, willful, malicious, and conducted in callous disregard for Plaintiff's rights, entitling him to punitive damages.

TENTH CAUSE OF ACTION

Wrongful Discharge in Violation of Public Policy (Tameny)

94. Plaintiff repeats, repleads, and incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

95. Through the California OSHA, it is established public policy to prevent and ameliorate health hazards arising from unsafe working conditions. Labor Code § 6310. As such, the public policy set forth in § 6310 is an appropriate basis for a *Tameny* claim. *Daly v. Exxon Corp.*, 55 Cal.App.4th 39, 44-5 (1997).

96. Defendant retaliated against Plaintiff by terminating him for reporting and resisting health and/or safety violations.

97. This conduct constitutes an unlawful employment practice in violation of California's well-established public policy.

98. As a proximate result of Defendants' conduct, Plaintiff has suffered special damages in the form of lost earnings, benefits, and/or out-of-pocket expenses in an amount subject to proof at trial. As further direct and proximate result of Defendants' conduct, Plaintiff continues to suffer damages in the form of lost future earnings, benefits, and/or other prospective damages in an amount to be proven at trial.

99. Defendants' conduct has further caused Plaintiff to lose financial stability, peace of mind, and future security, and has caused him severe embarrassment, humiliation, and mental and emotional distress and discomfort in an amount not fully ascertained but subject to proof at trial.

100. Defendants' conduct has been intentional, deliberate, willful, malicious, reckless, and conducted in callous disregard for Plaintiff's rights, entitling her to punitive damages.

DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure section 631 and Section 16 of Article I of the California Constitution, Plaintiff demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

- A. For actual and liquidated damages according to proof at trial;
- B. For statutory and civil penalties and special damages, according to proof at trial;
- C. For punitive and exemplary damages according to proof;
- D. For pre- and post-judgment interest on monetary damages;
- E. For reasonable attorneys' fees and costs and expert fees and costs as allowed by law;
- F. For such other relief as this Court deems just and proper.

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Dated: May 28, 2021

Respectfully submitted,
KING & SIEGEL LLP

By: Elliot J. Siegel
Elliot J. Siegel
Attorneys for Plaintiff