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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Donna Benz, Deputy

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This case has been assigned to Judge Mayne, John R
Dept. 21
Department _____, for all purposes including Trial.

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF STANISLAUS, CITY TOWERS COURTHOUSE

PHILLIP WILLS, an individual,

Plaintiff,

vs.

CASCADE FILTRATION, INC., a California
corporation, BRIAN SPINA, an individual and
DOES 1 through 20 inclusive,

Defendants.

Case No. CV-21-003798

COMPLAINT FOR:

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Failure to Pay Minimum Wage in Violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198;
3. Failure to Pay Overtime in Violation of Labor Code §§ 510 and 1198;
4. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
5. Failure to Provide Meal Periods in Violation of §§ 226.7, 512 (a), and 1198;
6. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 1198;
7. Failure to Timely Pay Wages in Violation of Labor Code § 204;
8. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;

9. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;

10. Unfair Competition in Violation of Labor Code §§17200, et seq.

Jury Trial Demanded

1. Plaintiff PHILLIP WILLS is informed and believes and thereon alleges as follows:

PARTIES, VENUE AND JURISDICTION

2. Plaintiff PHILLIP WILLS was at all times relevant hereto a resident of Red Bluff, California.

3. At all relevant times herein, Defendant CASCADE FILTRATION, INC. was a Corporation with its principal place of business in Red Bluff, California.

4. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5 because this suit was filed in the county where the liability arises, where the breach occurred and where Defendants' resided at the commencement of this action.

5. Defendant BRIAN SPINA was at all times relevant herein the principal of CASCADE FILTRATION, INC.

6. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity of interest and ownership between CASCADE FILTRATION, INC., BRIAN SPINA and DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

7. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of purported corporate existence, CASCADE FILTRATION, INC., BRIAN SPINA and DOES 1-20 are, in reality, one and the same.

8. CASCADE FILTRATION, INC., BRIAN SPINA and DOES 1-20 do not comply with all requisite corporate formalities to maintain a legal and separate existence.

9. The business affairs of CASCADE FILTRATION, INC., BRIAN SPINA and DOES

1 1-20 are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably
2 be segregated, and the same are in inextricable confusion. CASCADE FILTRATION, INC. is, and at
3 all times relevant hereto was, used by DOES 1-20 and BRIAN SPINA as a mere shell and conduit for
4 the conduct of certain of Defendants' affairs, and is, and was, the alter ego of DOES 1-20. The
5 recognition of the separate existence of CASCADE FILTRATION, INC. would not promote justice,
6 in that it would permit Defendants to insulate themselves from liability to Plaintiff for violations of
7 state law. The corporate existence of CASCADE FILTRATION, INC. and DOES 1-20 should be
8 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
9 and injustice to Plaintiff herein.

10 10. Accordingly, CASCADE FILTRATION, INC., BRIAN SPINA and DOES 1-20 are
11 the alter egos of one another, and the fiction of their separate corporate existence must be disregarded.

12 11. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
13 thereon alleges that CASCADE FILTRATION, INC., BRIAN SPINA and DOES 1-20 are joint
14 employers by virtue of a joint enterprise, and that the employees and agents of CASCADE
15 FILTRATION, INC. were also employees of BRIAN SPINA and DOES 1-20. CASCADE
16 FILTRATION, INC. employees performed services for each and every one of Defendants, and to the
17 mutual benefit of all Defendants, and all Defendants shared control of them as employees, either
18 directly or indirectly, and the manner in which Defendants' business was and is conducted.

19 12. The true names and capacities, whether individual, corporate, associate, or otherwise,
20 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
21 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
22 Complaint to insert the true names and capacities of these Defendants when they become known to
23 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
24 named Defendants is responsible for the wrongful acts alleged herein and are therefore liable to
25 Plaintiff as alleged hereinafter.

26 13. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
27 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
28 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and

1 each of them, and in doing the things alleged herein, were acting at least in part within the course and
2 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
3 joint venture and with the permission and consent of each of the other Defendants.

4 14. Plaintiff is informed and believes and based thereupon alleges, that Defendants,
5 including those defendants named as DOES 1-20 acted in concert with one another to commit the
6 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
7 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
8 based thereupon alleges, that Defendants, including those defendants named as DOES 1-20 formed
9 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
10 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
11 intended to cause and actually causing Plaintiff's harm.

12 15. Whenever and wherever reference is made in this Complaint to any act or failure to act
13 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
14 and/or failures to act by each Defendant acting individually, jointly and severally.

15 **FACTUAL ALLEGATIONS**

16 16. Plaintiff PHILLIP WILLS worked as a Technician for Defendants, exclusively onsite
17 at Nichols Farm from approximately October 12, 2019 to September 1, 2020.

18 17. Plaintiff PHILLIP WILLS' job duties included assembling and installing the food
19 processing machines and air filtration systems. Plaintiff worked at least 60 hours per week and was
20 paid \$15 per hour during his employment. However, Plaintiff, and six other crew members, traveled
21 from Red Bluff to Modesto every Monday to collect supplies for the week, and was only paid \$12 per
22 hour for the roundtrip drive from Modesto to Red Bluff.

23 18. Plaintiff PHILLIP WILLS also always worked overtime hours, during every pay
24 period, as his normal schedule included working from 4:00 a.m. to 5:00 p.m. on Mondays, 6:00 a.m.
25 to 5:30 p.m., Tuesday through Thursday, and 6:00 a.m. to 6:00 or 6:30 p.m. on Fridays.

26 19. During Plaintiff PHILLIP WILLS' employment, he was informed by Defendants that
27 he would need to supply his own tools to perform his job duties. Plaintiff and other aggrieved
28 employees purchased the necessary tools to perform their job duties but were not reimbursed for the

1 tools purchased by Defendants. Additionally, Plaintiff was not paid double the minimum wage for the
2 purchase of their tools, as required by the IWC Wage Orders, in violation of Labor Code §2802.

3 20. During Plaintiff PHILLIP WILLS' employment, Plaintiff and his coworkers took a one
4 hour meal period.

5 21. Initially, Plaintiff was authorized to take two rest periods, with the first one scheduled
6 for 9:00 a.m. and the second 10-minute rest period scheduled for 3:00 p.m. However, during the last
7 four months of Plaintiff's employment, he was no longer authorized to take his second rest period at
8 3:00 p.m. The decision to eliminate the second rest period came directly from the owner.

9 22. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
10 aggrieved employees were not paid for all hours worked because all hours worked were not recorded.
11 Specifically, Plaintiff and other aggrieved employees did not receive a second meal period on days
12 they worked in excess of 10 hours in one day.

13 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
14 have known that Plaintiff and other aggrieved employees were entitled to receive certain wages for
15 overtime compensation and that they were in fact not receiving certain wages for overtime
16 compensation for all of the hours they worked in excess of 8 hours in a day; in excess of 12 hours in
17 a day; and /or in excess of 40 hours in a week.

18 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
19 have known that Plaintiff and other aggrieved employees were entitled to receive at least minimum
20 wages for compensation and that they were not receiving at least minimum wages for work that was
21 required to be done off-the-clock. In violation of the Labor Code, Plaintiff and other aggrieved
22 employees were not paid at least minimum wages for work done off-the-clock.

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
24 have known that Plaintiff and other aggrieved employees were entitled to meal periods in accordance
25 with the Labor Code or payment of one additional hour of pay at their regular rates of pay when they
26 were not provided with timely, uninterrupted, 30 minute meal periods and that Plaintiff and other
27 aggrieved employees were not provided with all meal periods or payment of one additional hour of
28 pay at their regular rates of pay when they did not receive a timely, uninterrupted, 30 minute meal

1 period.

2 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
3 have known that Plaintiff and other aggrieved employees were entitled to two 10 minute rest periods
4 in accordance with the Labor Code and applicable IWC Wage Order or payment of one additional
5 hour of pay at their regular rates of pay when they were not provided with two compliant 10 minute
6 rest period, on days where they worked in excess of 10 hours in one day and that Plaintiff and other
7 aggrieved employees were not provided compliant 10 minute rest periods or payment of one
8 additional hour of pay at their regular rates of pay when they were not provided compliant 10 minute
9 rest periods.

10 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
11 have known that Plaintiff and other aggrieved employees were entitled to timely payment of all wages
12 earned upon termination of employment. In violation of the Labor Code, Plaintiff and other aggrieved
13 employees did not receive payment of all wages due, including overtime wages, minimum wages,
14 and meal and rest period premiums, and unreimbursed business expenses within the time periods
15 required by law.

16 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
17 have known that Plaintiff and other aggrieved employees were entitled to timely payment of wages
18 during their employment. Plaintiff and other aggrieved employees did not receive payment of all
19 wages, including overtime wages, minimum wages, and meal and rest period premiums in violation
20 of the California Labor Code.

21 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
22 have known that Plaintiff and other aggrieved employees were entitled to receive full reimbursement
23 for all business-related expenses and costs they incurred in direct consequence of the discharge of
24 their duties and that they did not receive full reimbursement of applicable business-related expenses
25 and costs incurred.

26 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and
28 other aggrieved employees for all hours worked, and that Defendants had the financial ability to pay

1 such compensation, but willfully, knowingly, and intentionally failed to do so.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

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

5 **(AGAINST ALL DEFENDANTS)**

6 31. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
7 though fully set forth herein.

8 32. An employer shall indemnify his or her employee for all necessary expenditures or
9 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
10 or her obedience to the directions of the employer.

11 33. From October 12, 2019 to the present date, Plaintiff has been required by Defendants
12 to purchase tools, and in fact did purchase tools in order to perform his duties, as Defendants did not
13 provide all tools necessary to perform his job.

14 34. Defendants have never reimbursed Plaintiff for the cost of these tools in violation of
15 Labor Code § 2802.

16 35. From October 12, 2019 to the present date, Defendants failed to pay Plaintiff less than
17 twice the minimum wage in contravention of the applicable IWC Wage Orders and California Labor
18 Code §§ 1182, 1194, 1194.2, and 1197.

19 36. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to
21 indemnify Plaintiff for the reasonable expenses he incurred in the course of performing his duties.

22 37. As a result of the foregoing, Plaintiff is entitled to recover all sums incurred by his for
23 the purchase of the tools that were necessary for the performance of his job and which he was required
24 to purchase in an amount according to proof at trial.

25 38. As a result of the foregoing, Plaintiff is further entitled to an award of interest at the
26 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the
27 necessary expenditures or loses and all reasonable costs, including attorney's fees incurred by him
28 enforcing the rights granted by Labor Code § 2802.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
IN VIOLATION OF LABOR CODE § 1197
(AGAINST ALL DEFENDANTS)

39. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

40. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G).

41. At all times relevant to this suit, the minimum wage applicable to Plaintiff was \$24 per hour, which represents twice the state minimum.

42. Due to Defendants’ company-wide scheduling practices and policies, Plaintiff was forced to forego meal periods and/or have his meal periods interrupted by work, and was not relieved of all duties for unpaid meal periods, in order to meet his deadlines and handle his workload. Defendants did not pay minimum wages for meal periods Plaintiff worked through that qualified for premium payment. Defendants did not pay Plaintiff for the time he continued to perform his duties during his meal periods.

43. Defendants had no policy and/or practice for scheduling second meal periods for employees or for authorizing and permitting employees to take second 30-minute meal periods on days they worked in excess of 10 hours in one day. As a result, Defendants did not provide Plaintiff with all second 30-minute meal periods to which he was entitled.

44. Defendants did not pay at least minimum wages for all hours worked by Plaintiff. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours Plaintiff worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, Defendants

1 regularly failed to pay at least minimum wages to Plaintiff for all of the hours he worked. Defendants'
2 failure to pay Plaintiff violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

3 45. Defendants failure to pay the legal minimum wage to Plaintiff as alleged herein is
4 unlawful and creates entitlement, pursuant to Labor Code §1194, to recovery by Plaintiff in a civil
5 action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference
6 between the straight time compensation paid and applicable minimum wage, including interest
7 thereon.

8 46. Pursuant to Labor Code §1194, Plaintiff is entitled to an award of reasonable attorneys'
9 fees and costs incurred in this action.

10 47. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
11 damages in an amount equal to the minimum wages unlawfully unpaid in the amount according to
12 proof at trial.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME WAGE**

15 **IN VIOLATION OF LABOR CODE § 510**

16 **(AGAINST ALL DEFENDANTS)**

17 48. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
18 though fully set forth herein.

19 49. Labor Code § 1198 makes it unlawful to employ an employee under conditions of labor
20 that are prohibited by the applicable wage order. California Labor Code § 1198 requires that "the
21 standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
22 employees. The employment of any employee . . . under conditions of labor prohibited by the order
23 is unlawful."

24 50. Labor Code § 510 and the applicable IWC Wage Order required Defendants to pay
25 employees a rate of time and one-half for all hours worked in excess of 8 hours in a day or 40 hours
26 in a workweek. Labor Code § 510 and the applicable IWC Wage Order further required Defendants
27 to pay employees working more than 12 hours in a day, overtime compensation at a rate of 2 times
28 their regular rate of pay, and 2 times their regular rate of pay for all hours worked in excess of 8

1 hours on the seventh consecutive day of a work in a workweek.

2 51. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
3 Code §510, 8 Code Regulations §§11010-11160, and the applicable IWC Wage Order.

4 52. At all relevant times, Defendants willfully failed to pay all overtime wages owed to
5 Plaintiff. At all relevant times, Plaintiff was not paid overtime premiums for all of the hours he
6 worked in excess of 8 hours in a day, in excess of 12 hours in a day, and/or in excess of 40 hours in a
7 week.

8 53. At all relevant times herein, Defendants had, and continue to have, a company-wide
9 policy of failing to implement any policies to authorize and permit employees to take compliant meal
10 periods and, instead, engaged in a practice of discouraging and impeding employees from taking meal
11 periods by assigning them a heavy workload and understaffing their facilities.

12 54. Additionally, Defendants, on a company-wide basis, failed to schedule meal periods
13 even though they are aware that employees are entitled to such meal periods. As a result of this
14 company-wide understaffing of its facilities and failure to schedule meal periods, Plaintiff was not
15 always authorized and permitted to take uninterrupted 30-minute meal periods during shifts to which
16 he was entitled to receive a meal period. For example, Plaintiff regularly worked through meal periods
17 and had meal periods interrupted by supervisors and by work to meet expected targets.

18 55. At all relevant times, Defendants had no policy for scheduling second meal periods and
19 no practice of permitting Plaintiff to take second 30-minute meal periods. As a result, on days that
20 Plaintiff worked in excess of 10 hours, he was not provided with second 30-minute meal periods.

21 56. Defendants knew or should have known that, as a result of their policies and practices,
22 Plaintiff was performing some of his assigned duties off-the-clock and/or during unpaid meal periods,
23 and was suffered or permitted to perform work for which he was not paid. Because Plaintiff worked
24 shifts in excess of 8 hours a day or more and 40 hours a week or more, much of this off-the-clock
25 work qualified for overtime premium pay. Therefore, Plaintiff was not paid overtime wages for all of
26 the overtime hours he actually worked. To the extent Plaintiff worked shifts in excess of 12 hours a
27 day, or in excess of 8 hours on the seventh consecutive day of a work in a workweek, Plaintiff was
28 not paid double time wages for all overtime hours he actually worked.

57. Defendants' failure to pay Plaintiff the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code §§ 510 and 1198. Pursuant to California Labor Code § 1194, Plaintiff is entitled to recover his unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

58. Labor Code §558 (a) requires that any person acting on behalf of an employer who violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Also, Labor Code §558 (a) for each subsequent violation, the person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages

59. In addition to the above withheld overtime wages, Plaintiff is entitled to civil penalties in this amount stated above based upon Defendants' underpayment of overtime wages. Defendants violated Labor Code §558 on each of the past pay periods within the one-year preceding the filing of this complaint, the first of which Defendants are penalized \$50.00, and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

IN VIOLATION OF LABOR CODE §§ 226, 1174 and 1198

(AGAINST ALL DEFENDANTS)

60. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

61. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross wages, total deductions net wages earned and name of the employer. An employer who violates these code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per

1 employee for each subsequent pay period, up to a statutory maximum of \$4,000.00.

2 62. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
3 employer, who violates or causes to be violated, Labor Code section 226, may be held liable as the
4 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a
5 natural person who is an owner, director, officer, or managing agent of the employer.

6 63. At all relevant times, Defendants have knowingly and intentionally furnished their
7 employees with uniform, incomplete, and inaccurate wage statements.

8 64. Because Defendants failed to document and deducted time worked from Plaintiff's
9 wage statements and employment records for meal periods he did not actually receive, Defendants
10 unlawfully deducted wages earned and meal period premiums that should have been paid. Thus,
11 Defendants did not furnish wage statements to Plaintiff containing the correct amount of gross wages
12 earned in violation of Labor Code § 226 (a) (1), accurate total hours worked in violation of Labor
13 Code § 226 (a) (2), correct amount of net wages earned in violation of Labor Code § 226 (a) (5), or
14 accurate number of hours worked at each corresponding hourly rate in violation of Labor Code § 226
15 (a) (9).

16 65. To the extent that Defendants paid any meal break premium and/or rest break premium
17 payments, Defendants failed to identify such payments on Plaintiff's wage statements and
18 employment records, and Defendants otherwise failed to provide information on the wage statements
19 sufficient to identify how many premium payments were paid during each pay period, the specific
20 dates worked giving rise to the premium payments owed, or to determine whether such premium
21 payments adequately and/or accurately compensated Plaintiff for any and all premiums owed.

22 66. Pursuant to the applicable IWC Wage Order, employers are required to keep accurate
23 time records showing when the employee begins and ends each work period and meal period, as well
24 as the total daily hours worked, total wages paid each payroll period, total hours worked in the payroll
25 period and applicable rates of pay.

26 67. California Labor Code section 1174 (d) provides that “every person employing labor
27 in this state shall ... keep a record showing the names and addresses of all employees employed and
28 the ages of all minors” and “keep, at a central location in the state or at the plants or establishments at

1 which employees are employed, payroll records showing the hours worked daily by and the wages
2 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
3 employed at the respective plants or establishments...”

4 68. At all relevant times, Defendants willfully failed to keep records of meal period start
5 and stop times, shift start and stop times, total hours worked in the payroll period and applicable hourly
6 rates of pay for Plaintiff as a result of failing to record the off-the-clock hours he worked during his
7 unpaid meal and rest periods in violation of section 1198 and 1174 (d).

8 69. Plaintiff is entitled to recover from Defendants the greater of his actual damages caused
9 by Defendants’ failure to comply with California Labor Code section 226 (a), or an aggregate penalty
10 not exceeding \$4,000 as well as attorneys’ fees and costs.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS**

13 **LABOR CODE §§ 226.7, 512 (a) and 1198**

14 **(AGAINST ALL DEFENDANTS)**

15 70. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
16 though fully set forth herein.

17 71. “An employer shall not employ an employee for a work period of more than five hours
18 per day without providing the employee with a meal period of not less than 30 minutes, except that if
19 the total work period per day of the employee is no more than six hours, the meal period may be
20 waived by mutual consent of both the employer and employee. An employer shall not employ an
21 employee for a work period of more than 10 hours per day without providing the employee with a
22 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
23 12 hours, the second meal period may be waived by mutual consent of the employer and the employee
24 only if the first meal period was not waived.” Lab. Code § 512; IWC Wage Order Nos. 1–2001 to 16–
25 2001, § 11; IWC Wage Order No. 17-2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal Code
26 Regs § 11170, § 9.

27 72. “An employer shall not require an employee to work during a meal ... period mandated
28 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare

1 Commission If an employer fails to provide an employee a meal ... period in accordance with a
2 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order
3 of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of
4 pay at the employee's regular rate of compensation for each workday that the meal ... period is not
5 provided.” Lab. Code § 226.7 (b) & (c).

6 73. At all relevant times herein, Defendants had, and continue to have, a company-wide
7 policy and/or practice of understaffing their locations while simultaneously assigning demanding
8 workloads, which had the combined effect of preventing employees from taking all timely,
9 uninterrupted meal periods to which they were entitled. Additionally, Defendants had no policy and/or
10 practice of scheduling meal periods for employees. As a result of Defendants’ policies and/or
11 practices, employees had to work through some or all of their meal periods, have their meal periods
12 interrupted to return to work, and/or wait extended periods of time before taking meal periods.

13 74. At all relevant times, Plaintiff regularly worked more than five hours per day, and was
14 thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

15 75. At all relevant times, Defendants failed and refused to provide Plaintiff with
16 uninterrupted meal periods during his work shifts, and failed to compensate him for missed meal
17 periods, as required by Labor Code §§ 226.7, 512, and 1198 as well as the applicable sections of the
18 Code of Regulations and Industrial Welfare Commission Orders.

19 76. Defendants did not provide Plaintiff with second 30-minute meal periods on days that
20 he worked in excess of 10 hours in one day. Plaintiff worked 10 or more hour shifts and, at times, up
21 to 12 or more hours in a shift without being permitted or authorized to take a second 30-minute meal
22 period.

23 77. Plaintiff is also informed and believe that Defendants engaged in a systematic,
24 company-wide practice and/or policy of not paying meal period premiums to employees regardless
25 of whether they were able to take a compliant meal break, in violation of the applicable IWC Wage
26 Order and Labor Code sections 226.7 and 512 (a). As a result, Defendants failed to provide Plaintiff
27 compliant meal periods in violation of California Labor Code sections 226.7 and 512 and failed to
28 pay the full meal period premiums due.

78. As alleged herein, Plaintiff is not exempt from the meal period requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders. Consequently, Plaintiff is owed one hour of pay at his regular hourly rate for each day that he was denied such meal periods.

79. At all relevant times, Defendants failed to provide Plaintiff with the statutory meal period for those days on which he worked at least five hours. Consequently, Plaintiff is owed one hour of pay at his regularly hourly rate then in effect for each day that he was denied such a meal period pursuant to Labor Code §§ 226.7 and 512, plus interest thereon and costs of suit in an amount subject to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

LABOR CODE §§ 226.7 and 1198

(AGAINST ALL DEFENDANTS)

80. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

81. At all times relevant herein, Labor Code §§ 226.7, 1198 and applicable IWC Wage Orders were applicable to Plaintiff's employment with Defendants.

82. At all relevant times, Labor Code §§ 226.7, 1198 and the applicable IWC Wage Order provided that employees must be given 10-minute net rest periods for every 4 hours of work, to be taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); Wage Order Nos. 1–2001 to 16–2001, §§11–12 (A); 8 Cal Code Regs §§11010-11160.

83. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus*

1 *v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-70 (2016).

2 84. “An employer shall not require an employee to work during a rest ... period mandated
3 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
4 Commission If an employer fails to provide an employee a rest ... period in accordance with a
5 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order
6 of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of
7 pay at the employee’s regular rate of compensation for each workday that the rest ... period is not
8 provided.” Lab. Code § 226.7 (b)-(c).

9 85. Defendants’ company-wide policy and practice of understaffing while simultaneously
10 assigning demanding workloads, prevented employees from being relieved of all duty in order to take
11 compliant rest periods.

12 86. Defendants also had a uniform policy of failing to schedule rest breaks. As a result,
13 employees missed their rest breaks, would be required to take them late, or would have their rest
14 breaks interrupted. Employees were prevented from being relieved of all duty in order to take
15 compliant rest periods and instead would be required to continue working.

16 87. Plaintiff worked shifts in excess of 3 ½ hours, in excess of 6 hours, and/or in excess
17 or 10 hours without receiving all uninterrupted 10-minute rest periods to which he was entitled.

18 88. Defendants have also engaged in a systematic, company-wide practice and/or policy
19 of not paying rest period premiums owed when rest periods are not authorized or permitted. Thus,
20 Defendants denied Plaintiff rest periods and failed to pay him rest period premium wages due, in
21 violation of Labor Code section 226.7 and the applicable IWC Wage Order.

22 89. As alleged herein, Plaintiff is not exempt from the rest period requirements of the
23 applicable Code of Regulations and Industrial Welfare Commission Orders. Consequently, Plaintiff is
24 owed one hour of pay at his regularly hourly rate then in effect for each day that he was denied such a
25 rest period pursuant to Labor Code §§ 226.7, plus interest thereon and costs of suit in an amount
26 subject to proof at trial.

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1 though fully set forth herein.

2 96. "If an employer discharges an employee, the wages earned and unpaid at the time of
3 discharge are due and payable immediately." Lab. Code § 201.

4 97. "If an employee not having a written contract for a definite period quits his or her
5 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless
6 the employee has given 72 hours previous notice of his or her intention to quit, in which case the
7 employee is entitled to his or her wages at the time of quitting." Lab. Code § 202.

8 98. "If an employer willfully fails to pay any wages of an employee who is discharged or
9 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
10 rate until paid or until an action therefor is commenced." Lab. Code § 203.

11 99. Plaintiff was not exempt from the requirements of Labor Code §§ 201-203.

12 100. At no time since Plaintiff's separation of employment did Defendants pay him wait-
13 time penalties as required by Labor Code § 203.

14 101. As a direct and proximate result of Defendants' willful failure to pay Plaintiff's wages
15 upon his separation of employment, Plaintiff incurred wait-time penalties in an amount equal to his
16 daily rate of pay over the period that the wages were not paid in an amount subject to proof at trial.

17 **NINTH CAUSE OF ACTION**
18 **CIVIL PENALTIES IN VIOLATION OF**
19 **LABOR CODE § 2699, ET SEQ.**
20 **(AGAINST ALL DEFENDANTS)**

21 102. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
22 though fully set forth herein.

23 103. Under Labor Code §2698, et seq., Plaintiff, as a aggrieved employee, may bring an
24 action against Defendants, on behalf of himself and other current or former employees, seeking civil
25 penalties for defendants' violations of the California Labor Code.

26 104. Plaintiff was an aggrieved employee within the meaning of Labor Code §2698, et seq.
27 by virtue of the numerous Labor Code violations she was subjected to as plead herein.

28 105. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings

1 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse
2 for necessary business expenditures in violation of Labor Code § 2802, failing to pay minimum wages
3 in violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198, failing to pay overtime in
4 violation Labor Code §§ 510 and 1198, failing to furnish compliant wage statements and maintain
5 accurate pay records in violation of § 226, 1174 (d), and 1198, failing to provide meal periods in
6 violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in violation of Labor Code §§
7 226.7 and 1198, failure to timely pay wages in violation of Labor Code § 204 and willful failure to
8 pay wages in violation of Labor Code § 201-203.

9 106. On May 11, 2021, Plaintiff provided written notice by online filing with the Labor and
10 Workforce Development Agency and by certified mail to Defendants of the specific provisions of the
11 Labor Code alleged to have been violated, including the facts and theories to support the alleged
12 violation, as required by Labor Code § 2699.3 (a) (1) (A).

13 107. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and
14 Workforce Development Agency of its intent to pursue an action against Defendants.

15 108. As a direct and proximate result of Defendants' California Labor Code violations as set
16 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period
17 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
18 violation, pursuant to Labor Code §2699 (f), for those Labor Code sections not expressly providing
19 for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
20 provide for a penalty.

21 109. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the
22 recovered civil penalties.

23 **TENTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION IN VIOLATION OF**

25 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

26 **(AGAINST ALL DEFENDANTS)**

27 110. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
28 though fully set forth herein.

1 111. Defendants are a “person” as defined by California Business & Professions Code
2 sections 17201.

3 112. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful
4 and harmful to Plaintiff and to the general public. Plaintiff has suffered injury in fact and has lost
5 money as a result of Defendants’ unlawful business practices. Plaintiff seeks to enforce important
6 rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

7 113. A violation of California Business & Professions Code sections 17200, *et seq.* may be
8 predicated on the violation of any state or federal law.

9 114. Defendants’ failure to obey the wage and hour laws plead herein, including violations
10 of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business practices in
11 violation of Business & Professions Code §§17200, *et seq.*

12 115. As a result of Defendants’ unfair business practices, Defendants have reaped unfair
13 benefits and illegal profits at the expense of Plaintiff and members of the public.

14 116. Pursuant to California Business & Professions Code sections 17200 *et seq.* Plaintiff is
15 entitled to restitution of the wages withheld and retained by Defendants during a period that
16 commences four years prior to the filing of this complaint; a permanent injunction requiring
17 Defendants to pay all outstanding wages due to Plaintiff and aggrieved employees; and an award of
18 attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable
19 laws; and an award of costs.

20 **PRAYER FOR RELIEF**

21 Plaintiff prays for relief and judgment against Defendants as follows:

22 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess
23 of \$25,000, exclusive of interest and costs.

24 **As to the First Cause of Action**
25 **(Unreimbursed Business Expenses)**

26 2. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802
27 by willfully failing to reimburse business expenses incurred by Plaintiff and the Class;

28 3. For unreimbursed business expenses and for all actual, consequential, and incidental

1 losses and damages, according to proof;

2 4. For interest at the same rate as judgments in civil actions, accruing from the date on
3 which Plaintiff and the Class incurred the necessary expenditures or loses pursuant to Labor Code §
4 2802;

5 5. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the
6 rights granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

7 6. For such other relief that the Court deems just and appropriate.

8 **As to the Second Cause of Action**

9 **(Unpaid Minimum Wages)**

10 7. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
11 1182.12, 1194, 1197, 1197.1, 1198, applicable Wage Orders and Codes of Regulation by willfully
12 failing to pay minimum wages to Plaintiff and class members;

13 8. For payment of unpaid wages in an amount subject to proof;

14 9. For liquidated damages pursuant to Labor Code §1194.2 in an amount subject to proof,
15 plus interest;

16 10. For prejudgment interest at the legal rate from the date the obligation became due
17 through the date of judgment in this matter;

18 11. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the
19 rights granted by Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 pursuant to Labor Code §
20 1194 (a); and

21 12. For such other relief that the Court deems just and appropriate.

22 **As to the Third Cause of Action**

23 **(Unpaid Overtime)**

24 13. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
25 510 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
26 overtime wages to Plaintiff;

27 14. For payment of unpaid overtime wages in an amount subject to proof;

28 15. For prejudgment interest at the legal rate from the date the obligation became due

1 through the date of judgment in this matter;

2 16. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the
3 rights granted by Labor Code §§ 510 and 1198 pursuant to Labor Code § 1194 (a); and

4 17. For such other relief that the Court deems just and appropriate.

5 **As to the Fourth Cause of Action**

6 **(Noncompliant Wage Statements and Payroll Records)**

7 18. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
8 226 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnished
9 compliant, accurate itemized wage statements to Plaintiff and for failure to keep accurate payroll
10 records;

11 19. For consequential and incidental losses and damages according to proof;

12 20. For injunctive relief pursuant to Labor Code § 226 (h);

13 21. For statutory penalties pursuant to Labor Code § 226 (e);

14 22. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the
15 rights granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and

16 23. For such other relief that the Court deems just and appropriate.

17 **As to the Fifth Cause of Action**

18 **(Failure to Provide Meal Periods)**

19 24. That the Court declare, adjudge, and decree that Defendants violated California Labor
20 Code §§ 226.7, 512 (a), 1198, applicable IWC Wage Orders and Codes of Regulation by willfully
21 failing to provide all meal periods to Plaintiff;

22 25. That the Court make an award to the Plaintiff of one hour of pay at his regular rate of
23 pay for each workday that a meal period was not provided;

24 26. For all actual, consequential, and incidental losses and damages, according to proof;

25 27. For premiums pursuant to California Labor Code section 226.7 (b);

26 28. For pre-judgment interest on any unpaid meal period premiums from the date such
27 amounts were due, or as otherwise provided by law;

28 29. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or

1 as otherwise provided by law; and

2 30. For such other relief that the Court deems just and appropriate.

3 **As to the Sixth Cause of Action**

4 **(Failure to Provide Rest Periods)**

5 31. That the Court declare, adjudge, and decree that Defendants violated California Labor
6 Code §§ 226.7, 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to
7 provide all rest periods to Plaintiff;

8 32. That the Court make an award to Plaintiff of one hour of pay at his regular rate of pay
9 for each workday that a rest period was not provided;

10 33. For all actual, consequential, and incidental losses and damages, according to proof;

11 34. For premiums pursuant to California Labor Code section 226.7 (b);

12 35. For pre-judgment interest on any unpaid rest period premiums from the date such
13 amounts were due, or as otherwise provided by law;

14 36. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
15 as otherwise provided by law; and

16 37. For such other relief that the Court deems just and appropriate.

17 **As to the Seventh Cause of Action**

18 **(Failure to Timely Pay Wages)**

19 38. That the Court declare, adjudge, and decree that Defendants violated California Labor
20 Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay
21 wages to Plaintiff and class members;

22 39. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully
23 withheld from Plaintiff and class members;

24 40. For all actual, consequential, and incidental losses and damages, according to proof;

25 41. For pre-judgment interest on any unpaid wages from the date such amounts were due,
26 or as otherwise provided by law;

27 42. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
28 as otherwise provided by law; and

1 43. For such other relief that the Court deems just and appropriate.

2 **As to the Eighth Cause of Action**

3 **(Willful Failure to Pay Wages)**

4 44. That the Court declare, adjudge, and decree that Defendants violated California Labor
5 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
6 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff either upon discharge
7 or within 72 hours of their resignation;

8 45. For wait time penalties pursuant to Labor Code § 203;

9 46. For all actual, consequential, and incidental losses and damages, according to proof;

10 47. For pre-judgment interest on any unpaid wages from the date such amounts were due,
11 or as otherwise provided by law;

12 48. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
13 as otherwise provided by law; and

14 49. For such other relief that the Court deems just and appropriate.

15 **As to the Ninth Cause of Action**

16 **(Civil Penalties under the PAGA)**

17 50. That the Court declare, adjudge, and decree that Defendants violated all California
18 Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174,
19 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

20 51. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or
21 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor
22 Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

23 52. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any
24 and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead
25 herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1,
26 1198 and 2802;

27 53. For pre-judgment and post-judgment interest as provided by law; and

28 54. For such other and further relief as the Court deems just and appropriate.

1 **As to the Tenth Cause of Action**

2 **(Unfair Competition)**

3 55. That the employment practices engaged in by Defendant as plead herein, including
4 violations of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair
5 business practices in violation of Business & Professions Code §§17200, et seq.;

6 56. For restitution of unpaid wages to Plaintiff and prejudgment interest from the day such
7 amounts were due and payable;

8 57. For the appointment of a receiver to receive, manage and distribute any and all funds
9 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
10 result of violations of California Business & Professions Code sections 17200, et seq.;

11 58. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
12 Code of Civil Procedure § 1021.5; and

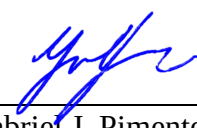
13 59. For such other and further relief as the Court deems just and appropriate.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a trial by jury on all issues.

16 **PIMENTEL LAW, P.C.**

17
18 Dated: July 21, 2021

19 By: 
Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez, Esq.
Attorneys for Plaintiff