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Electronically Filed
9/17/2021 4:34 PM
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County of Stanislaus
Clerk of the Court
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10 Attorneys for Plaintiffs RUBEN ROSAS
and ROBERT ROSAS

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF STANISLAUS**

13 RUBEN ROSAS and ROBERT ROSAS,
14 individually and on behalf of all others
15 similarly situated,

16 Plaintiffs,

17 v.

18 SIERRA PACIFIC REFRIGERATED
SERVICES, LLC, a California limited
19 liability company; SIERRA PACIFIC
REFRIGERATED SERVICES LIMITED
20 PARTNERSHIP, a California limited
partnership; ROY ATKINS, an individual;
21 SIERRA PACIFIC REFRIGERATED
SRVC, an entity of unknown form and
22 citizenship; and DOES 1 through 50,
inclusive,

23 Defendants.

CASE NO.: CV-21-003621

Assigned for All Purposes to:
Hon. John R. Mayne, Dept. 21

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods or Compensation in Lieu Thereof;
3. Failure to Permit Rest Periods or Provide Compensation in Lieu Thereof;
4. Knowing and Intentional Failure to Provide Accurate Itemized Wage Statements;
5. Waiting Time Penalties;
6. Failure to Reimburse Business Expenses;
7. Violations of the Unfair Competition Law; and
8. Violation of the Private Attorneys General Act of 2004.

Action Filed: July 12, 2021
Trial Date: None set

JURY TRIAL DEMANDED

1 Plaintiffs RUBEN ROSAS and ROBERT ROSAS (collectively “Plaintiffs”), on behalf of
2 themselves and all others similarly situated, hereby bring this First Amended Class and
3 Representative Action Complaint (“FAC”) against Defendants SIERRA PACIFIC
4 REFRIGERATED SERVICES, LLC, a California limited liability company; SIERRA PACIFIC
5 REFRIGERATED SERVICES LIMITED PARTNERSHIP, a California limited partnership; ROY
6 ATKINS, an individual; SIERRA PACIFIC REFRIGERATED SRVC, an entity of unknown form
7 and citizenship; and DOES 1 through 50, inclusive (collectively “Defendants”), and allege as
8 follows:

9 **INTRODUCTION**

10 1. This proposed class action, pursuant to California Code of Civil Procedure section
11 382, is brought by Plaintiffs on behalf of themselves and all current and former non-exempt
12 employees of Defendants in California during the Class Period (collectively the “Class” or “Class
13 Members”). The term Class Period is defined as four years prior to the filing of this action to the
14 date of class certification.

15 2. Plaintiff Ruben Rosas also brings this representative action pursuant to the Private
16 Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”), against Defendants,
17 on behalf of himself individually and other aggrieved employees who are and were employed by
18 Defendants as non-exempt employees throughout California during the PAGA Period (the
19 “aggrieved employees”). The term PAGA Period is defined as one year prior to Plaintiff Ruben
20 Rosas’ initial notice of Labor Code violations to the Labor and Workforce Development Agency
21 (“LWDA”) and Defendants until judgment.

22 3. This proposed class and representative action seeks, *inter alia*, unpaid wages
23 (including minimum, regular, overtime, and double time wages), compensation for non-compliant
24 meal periods and rest breaks, waiting time penalties, itemized wage statement penalties, civil
25 penalties, business expense reimbursements, liquidated damages, interest, penalties, reasonable
26 attorneys’ fees, and costs. Plaintiffs’ action is brought under, *inter alia*, the California Industrial
27 Welfare Commission (“IWC”) Wage Orders and applicable provisions of the California Code of
28 Regulations, California Business & Professions Code sections 17200 *et seq.*, California Civil Code

1 section 3289, California Code of Civil Procedure section 1021.5, and California Labor Code
2 (“Labor Code”) sections 201-204, 206, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174,
3 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, 2800, and 2802.

4 4. Under the California Unfair Competition Law, Business and Professions Code
5 sections 17200 *et seq.* (“UCL”), and pursuant to the class action procedures provided for in this
6 statute, Plaintiffs, on behalf of themselves and the proposed Class, seeks declaratory relief,
7 injunctive relief, and restitution of all benefits Defendants have received from their employees due
8 to their unlawful business practices, including but not limited to, their failure to timely provide
9 minimum, regular, overtime, and double time compensation due for all hours worked, failure to
10 reimburse business expenses, failure to provide compliant meal periods and rest breaks to their
11 employees or compensation in lieu thereof, and failure to provide accurate itemized wage
12 statements.

13 **JURISDICTION AND VENUE**

14 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
15 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
16 in all cases except those given to other trial courts. All claims alleged herein arise under California
17 law for which Plaintiffs seek relief authorized by California law. Further, this is a class action
18 pursuant to California Code of Civil Procedure section 382 and representative action under PAGA.
19 As such, the monetary damages, restitution, penalties, and other amounts sought by Plaintiffs
20 exceed the minimal jurisdictional limits of the Superior Court and will be established according to
21 proof at trial. The Court also has jurisdiction over certain causes of action pursuant to California
22 Business & Professions Code sections 17203 and 17204, which provide for exclusive jurisdiction
23 for enforcement of this statute in any court of competent jurisdiction.

24 6. This Court has jurisdiction over all Defendants because each Defendant is a citizen
25 of California, a corporation or association organized under the laws of the State of California, an
26 association authorized to do business in California and registered with the California Secretary of
27 State, does sufficient business in California, has sufficient minimum contacts with California,
28 and/or intentionally avails itself of the laws and markets of California through the promotion, sale,

1 marketing and distribution of its products and/or services in California to render the exercise of
2 jurisdiction by the California courts permissible.

3 7. Venue in Stanislaus County is proper under California Business & Professions Code
4 section 17203 and California Code of Civil Procedure section 395.5 because a substantial part of
5 Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County,
6 Defendants had and have ongoing projects in this County, Defendants conduct substantial business
7 in this County, Defendants' liability arose in this County, and/or Defendants reside, transact
8 business, maintain offices, and/or have an agent or agents in this County. The relief requested is
9 within the jurisdiction of this Court.

10 **PARTIES**

11 8. Plaintiff Ruben Rosas is an individual who resides in Stanislaus County, California.
12 In or around 2004, Defendants hired Plaintiff Ruben Rosas as a non-exempt hourly employee.
13 Plaintiff Ruben Rosas' job duties include, *inter alia*, shipping and receiving duties, and loading
14 trucks with various perishable items, among other things.

15 9. Plaintiff Robert Rosas is a California resident. Defendants hired Plaintiff Robert
16 Rosas as a non-exempt hourly employee. Defendants terminated Plaintiff Robert Rosas'
17 employment within one year of the filing of this action.

18 10. Plaintiffs are informed, believe and thereon allege that, at all relevant times,
19 SIERRA PACIFIC REFRIGERATED SERVICES, LLC ("SPRS, LLC") was and is a California
20 limited liability company. SPRS, LLC owns and operates a warehousing, refrigeration, and logistics
21 company with locations throughout California, including in Stanislaus County. Plaintiffs are further
22 informed, believe and thereon allege that, at all relevant times, SPRS, LLC regularly conducted and
23 conducts business within the State of California and derives substantial revenues from services
24 performed in California. In addition, Plaintiffs are informed, believe and thereon allege that, at all
25 relevant times, SPRS, LLC was and is an employer subject to California state wage and hour laws.
26 Plaintiffs are informed, believe and thereon allege that Michael McNulty is a partner, member
27 and/or manager, and agent for service of process for SPRS, LLC and Roy Atkins is a partner and
28 member and/or manager for SPRS, LLC.

1 11. Plaintiffs are informed, believe and thereon allege that, at all relevant times,
2 SIERRA PACIFIC REFRIGERATED SERVICES LIMITED PARTNERSHIP (“SPRS LP”) was
3 and is a California limited partnership that is doing business as Sierra Pacific Refrigerated Services.
4 Plaintiffs are informed, believe and thereon allege that SPRS LP owns and operates a warehousing,
5 refrigeration, and logistics company with locations throughout California, including in Stanislaus
6 County. Plaintiffs are further informed, believe and thereon allege that, SPRS LP regularly
7 conducted and conducts business within the State of California and derives substantial revenues
8 from services performed in California. In addition, Plaintiffs are informed, believe and thereon
9 allege that, SPRS LP is, and at all relevant times was, an employer subject to California state wage
10 and hour laws. Plaintiffs are informed, believe and thereon allege that Michael McNulty is a
11 General Partner and agent for service of process for SPRS LP and Roy Atkins is a General Partner
12 of SPRS LP.

13 12. Plaintiffs are informed, believe and thereon allege that, at all relevant times, ROY
14 ATKINS (“Mr. Atkins”) was and is an individual doing business as Sierra Pacific Refrigerated
15 SRVC and Sierra Pacific Refrigerated Services GP. Mr. Atkins owns and operates a warehousing,
16 refrigeration, and logistics company with locations throughout California, including in Stanislaus
17 County. Plaintiffs are informed, believe and thereon allege that, at all relevant times, Mr. Atkins
18 regularly conducted and conducts business within the State of California and derives substantial
19 revenues from services performed in California. In addition, Plaintiffs are informed, believe and
20 thereon allege that, Mr. Atkins is, and at all relevant times was, an employer subject to California
21 state wage and hour laws.

22 13. Plaintiffs are informed and believe, and thereon allege Mr. Atkins is the Member
23 and/or Manager of SPRS, LLC and General Partner of SPRS GP. In addition, Mr. Atkins is doing
24 business under two fictitious business names – Sierra Pacific Refrigerated SRVC and Sierra Pacific
25 Refrigerated Services GP. Plaintiffs are informed and believe, and thereon allege, that during the
26 relevant time period, Mr. Atkins was introduced to Plaintiffs and other employees as an “owner”
27 and was involved in the day-to-day operations of Defendants’ facilities and worksites; creating and
28 implementing company policies, procedures, and practices; working directly at Defendants’

1 worksites; and meeting and communicating with employees, among other things. Consequently,
2 Mr. Atkins violated or caused to be violated the Industrial Welfare Commission (“IWC”) Wage
3 Order provisions regulating minimum wages or hours and days of work, as well as Labor Code
4 Sections 203, 204, 226, 226.7, 1194, 1197 and 2802 as explained herein and below. Thus, Mr.
5 Atkins is personally liable for the Labor Code and IWC Wage Order violations pursuant to Labor
6 Code Section 558.1.

7 14. Plaintiffs are informed, believe and thereon allege that, at all relevant times,
8 SIERRA PACIFIC REFRIGERATED SRVC (“SRVC”) owns and operates a warehousing,
9 refrigeration, and logistics company with locations throughout California, including in Stanislaus
10 County. Plaintiffs are further informed, believe and thereon allege that, SRVC regularly conducted
11 and conducts business within the State of California and derives substantial revenues from services
12 performed in California. In addition, Plaintiffs are informed, believe and thereon allege that, SRVC
13 is, and at all relevant times was, an employer subject to California state wage and hour laws.

14 15. Plaintiffs are informed, believe and based thereon allege that Defendants have
15 common ownership, officers, members, managers, and/or agents and own and operate numerous
16 warehouses under the name Sierra Pacific Warehouse Group and/or under their various fictitious
17 business names such as Sierra Pacific Refrigerated Services, Sierra Pacific Refrigerated SRVC, and
18 Sierra Pacific Refrigerated Services GP.

19 16. Plaintiffs are informed, believe and based thereon allege that Defendants suffered
20 and permitted Plaintiffs and the Class Members to work, and/or jointly exercised control over the
21 wages, hours, and/or working conditions of Plaintiffs and the Class Members.

22 17. Defendants continue to employ non-exempt employees within California.

23 18. Plaintiffs are unaware of the true names and capacities of those defendants identified
24 as DOES 1 through 50. Therefore, Plaintiffs identify those defendants fictitiously. Plaintiffs are
25 informed, believe and thereon allege that at all relevant times each DOE defendant was a parent,
26 sister, or related corporate entity of defendants, or an owner, employee or agent of defendants, and
27 each related entity, and was acting with the knowledge and authorization of each of the other
28 defendants. Plaintiffs will seek to amend this FAC to allege the true names and capacities of each

DOE defendant when their names have been ascertained and identified. Plaintiffs are informed, believe and thereon allege that each of the defendants sued as DOES 1 through 50 participated in, received the benefit of, or was in some way responsible for one or more of the wrongful acts and omissions and some portion of the damages alleged herein.

19. Plaintiffs are informed, believe and thereon allege that at all times material hereto, each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiffs and the Class Members.

20. Plaintiffs are informed, believe and thereon allege that defendants, each and all of them, at all times material hereto, were the joint employers, parent companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers, directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining defendants. Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within the course and scope of said relationship(s), and are a proximate cause of Plaintiffs' damages as herein alleged.

21. Plaintiffs are informed, believe and thereon allege, that there exists a unity of interest in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality and separateness between the individual and the corporation does not exist, as Defendants, and DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned herein were mere shells, instrumentalities and conduits through which DOES 1 through 50, inclusive, carried out their business in the business name, exercising complete control and dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES 1 through 50, inclusive, and were without the financial solvency and responsibility required by law; and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50, inclusive, or some other individual or entity which he or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,

1 Plaintiffs are informed, believe and thereon allege, that there exists a principal-agency relationship
2 between and among Defendants.

3 22. At all relevant times herein, Defendants were agents of each other and acting within
4 the course and scope of their agency.

5 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

6 23. Pursuant to California Code of Civil Procedure section 382, Plaintiffs bring this
7 action individually and as a class action on behalf of a proposed Class defined as follows:

8 Class:

9 All current and former non-exempt employees employed by Defendants in the State
10 of California within four years prior to the commencement of this action to the date
11 of class certification.

12 24. The Class is also comprised of the following Subclass:

13 Waiting Time Sub-Class:

14 Those members of the Class who separated from their employment with Defendants
15 within three years prior to the commencement of this action to the date of class
16 certification.

17 25. Plaintiffs reserve the right pursuant to California Rules of Court, Rule 3.764 and
18 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide
19 greater specificity and/or further division into subclasses or limitation to particular issues based on
20 further investigation and discovery.

21 26. This action is brought, and may properly be maintained, as a class action pursuant
22 to California Code of Civil Procedure section 382 because there is a well-defined community of
23 interest in the litigation, and the proposed class is easily ascertainable. This action presents
24 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
25 predominance, and superiority requirements of this provision.

26 27. Through this action, Plaintiffs allege Defendants have consistently maintained and
27 enforced against Plaintiffs and Class Members unlawful employment practices and policies which
28 violate the Labor Code and IWC Wage Orders.

1 28. Plaintiffs are informed, believe, and thereon allege that during the Class Period,
2 Defendants failed to pay Plaintiffs and Class Members all minimum, regular, overtime, and double
3 time wages for all hours worked in violation of the Labor Code and IWC Wage Orders. During the
4 Class Period, Plaintiffs and Class Members regularly worked more than eight (8) hours, 10 hours,
5 and/or 12 hours per workday and/or over 40 hours per workweek. Defendants failed to pay
6 Plaintiffs and other Class Members for all hours worked by editing timecards and/or automatically
7 deducting meal periods even when meal periods were not taken by Plaintiffs and the Class
8 Members. In addition, Defendants rounded Plaintiffs' and the Class Members' meal periods,
9 thereby depriving them of work performed during meal periods. Defendants' rounding practice
10 systematically undercompensated the Class Members and favored the employer rather than the
11 employee. Further, Defendants failed to pay Plaintiffs and other Class Members for time worked
12 off-the-clock, e.g., Class Members were required to clock out for first and second meal periods and
13 continue working off-the-clock without compensation. As such, Defendants failed to pay Plaintiffs
14 and other Class Members minimum, regular, overtime, and double time wages for all hours worked,
15 in violation of the Labor Code and applicable IWC Wage Orders.

16 29. Plaintiffs are informed, believe, and thereon allege that during the Class Period,
17 Defendants deprived Plaintiffs and Class Members of the opportunity to take all of their statutorily
18 entitled meal periods within the appropriate time intervals or provide compensation in lieu thereof
19 in violation of the Labor Code and IWC Wage Orders. During the Class period, Defendants failed
20 to provide timely off-duty 30-minute meal periods within the appropriate time intervals to Plaintiffs
21 and other Class Members as required by Labor Code section 512 and section 11 of the applicable
22 Wage Order. Specifically, Plaintiffs and Class Members regularly worked through their meal
23 periods due to Defendants' understaffing and workload. As such, Plaintiffs and Class Members
24 regularly ate their meals while working and/or while being restricted to Defendants' worksite. Due
25 to Defendants' understaffing, Plaintiffs and Class Members also missed their meal periods or had
26 them interrupted, shortened, and/or late. For example, meal periods were regularly taken late since
27 Plaintiffs and Class Members were not allowed to take a meal period until the trucks were loaded.
28 Meal periods were also interrupted with work related questions and assignments. In addition,

1 Plaintiffs and other Class Members were required to answer their cell phones during their shifts,
2 including during their meal periods. Thus, Plaintiffs and Class Members were denied off-duty meal
3 periods. Defendants also auto-deducted 30-minute meal periods even when Plaintiffs and other
4 Class Members were not provided with meal periods, and rounded meal periods in violation of
5 California law. Further, Defendants required Plaintiffs and other Class Members to clock out for
6 first and second meal periods and continue working off-the-clock without compensation.
7 Defendants also failed to provide second meal periods. Despite these meal period violations,
8 Defendants failed to compensate Plaintiffs and other Class Members with an additional hour of pay
9 at their regular rate for every day in which they suffered a meal period violation. Accordingly,
10 Defendants failed to provide Plaintiffs and Class Members with timely, uninterrupted off-duty meal
11 periods for at least 30 minutes when they worked more than five (5) hours and/or 10 hours in a
12 workday, and failed to compensate Plaintiffs and Class Members with an additional hour of pay at
13 their regular rate of pay for every day in which they were denied a compliant meal period in
14 violation of the Labor Code and applicable IWC Wage Orders.

15 30. Plaintiffs are informed, believe, and thereon allege that during the Class Period,
16 Defendants failed to permit Plaintiffs and Class Members to take all of their statutorily entitled 10-
17 minute rest periods for every four (4) hours worked or major fraction thereof or provide
18 compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders. Specifically,
19 Defendants failed to provide rest breaks to Plaintiffs and Class Members due to its understaffing
20 and workload as mentioned above. As such, Plaintiffs and Class Members regularly missed their
21 rest breaks, had them restricted to the worksite, shortened, interrupted, and/or missed altogether. In
22 addition, Plaintiffs and other Class Members were required to answer their cell phones during their
23 shifts, including during their rest periods. Thus, Plaintiffs and Class Members were denied off-duty
24 rest periods. Defendants also failed to adopt and implement a practice of providing third rest breaks
25 when Plaintiffs and Class Members worked over 10 hours. Notwithstanding these rest break
26 violations, Defendants failed to compensate Plaintiffs and other Class Members with an additional
27 hour of pay at their regular rate for every day in which they suffered a rest period violation.
28 Accordingly, Defendants violated the Labor Code and applicable IWC Wage Orders.

31. Plaintiffs are informed, believe, and thereon allege that during the Class Period, Defendants failed to reimburse Plaintiffs and Class Members for necessary business expenses incurred in the performance of their duties in violation of the Labor Code and IWC Wage Orders. During the Class Period, Defendants failed to reimburse Plaintiffs and other Class Members for all business expenses incurred for Defendants' benefit, including using their personal cell phones to communicate with Defendants' management, employees, and customers. Defendants failed to reimburse Plaintiffs and Class Members a reasonable portion of their phone bills. For example, Plaintiffs were required to download phone applications on their personal cell phone to perform their job duties and communicate with Defendants' management, employees, and customers without reimbursement. Accordingly, Defendants violated the Labor Code and applicable IWC Wage Orders.

32. Plaintiffs are informed, believe, and thereon allege that during the Class Period, Defendants willfully failed to timely pay all wages due to Plaintiff Robert Rosas and the Waiting Time Subclass upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff Robert Rosas and the Waiting Time SubClass Members were not paid all wages (including minimum, regular, overtime, and double time wages), reimbursements, meal period premiums, and/or rest period premiums within the required time period in violation of the Labor Code and applicable IWC Wage Orders.

33. Plaintiffs are informed, believe, and thereon allege that during the Class Period, Defendants failed to furnish Plaintiffs and Class Members with accurate and complete wage statements in violation of the Labor Code and IWC Wage Orders. Plaintiffs and Class Members received wage statements which did not accurately reflect the gross and net wages earned, total hours worked, and all applicable rates of pay and the corresponding number of hours worked at each pay rate, among other things in violation of the Labor Code and IWC Wage Orders.

34. Plaintiffs are informed, believe, and thereon allege that Defendants' actions as described throughout this FAC were willful.

NUMEROSITY

35. The Class is so numerous that joinder of all of its members is impracticable. While

1 the exact number and identities of Class Members are unknown to Plaintiffs at this time and can
2 only be ascertained through appropriate discovery, Plaintiffs are informed, believe and thereon
3 allege that the Class consists of more than 100 persons.

4 36. A class action is the only available method for the fair and efficient adjudication of
5 this controversy. The members of the Class are so numerous that joinder of all members is
6 impractical, if not impossible. The identity of Class Members can be ascertained by analysis of
7 Defendants' employee and payroll records.

8 **COMMONALITY**

9 37. Common questions of fact and law exist as to all members of the Class that
10 predominate over any questions affecting only individual Class Members. These common legal and
11 factual questions include, but are not limited to, the following:

12 (a) Whether Defendants failed to pay Plaintiffs and Class Members all
13 minimum, regular, overtime, and double time wages for all hours worked by Plaintiffs and Class
14 Members;

15 (b) Whether Defendants failed to provide timely, uninterrupted, off-duty 30-
16 minute meal periods to Plaintiffs and Class Members without compensation in lieu thereof;

17 (c) Whether Defendants failed to permit timely, uninterrupted, off-duty 10-
18 minute rest breaks for every four hours or major fraction thereof worked by Plaintiffs and Class
19 Members without compensation in lieu thereof;

20 (d) Whether Defendants failed to timely pay Plaintiff Robert Rosas and the
21 Waiting Time SubClass Members all wages due either immediately upon termination or within 72
22 hours after resignation;

23 (e) Whether Defendants' conduct was willful;

24 (f) Whether Defendants failed to issue accurate itemized wage statements to
25 Plaintiffs and Class Members;

26 (g) Whether Defendants failed to reimburse Plaintiffs and Class Members for
27 necessary business expenditures;

28 (h) Whether Defendants engaged in unfair business practices in violation of

1 California Business & Professions Code sections 17200 *et seq.*; and

2 (i) Additional common questions of law and fact that may develop as the
3 litigation progresses.

4 **TYPICALITY**

5 38. Plaintiffs are informed, believe, and thereon allege that Plaintiffs' claims are typical
6 of the claims of the Class because: Plaintiffs and the Class sustained injuries and damages arising
7 out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same
8 course of conduct by Defendants; Plaintiffs' claims are based upon the same legal theories as the
9 claims of the Class; and the legal issues raised under California state law as a result of Defendants'
10 conduct apply equally to Plaintiffs and the Class Members.

11 **ADEQUACY OF REPRESENTATION**

12 39. Plaintiffs are adequate representatives of the Class, in that their claims (and
13 defenses, if any) are typical of those of the Class. Plaintiffs have no conflicts of interest with their
14 fellow Class Members and will be able to fairly and adequately protect the interests of the Class.
15 Plaintiffs have the same interests in the litigation of this case as the Class Members; and are
16 committed to vigorous prosecution of this case and have retained competent counsel experienced
17 in class action and wage and hour litigation of this nature.

18 **PREDOMINANCE**

19 40. Defendants have engaged in a common course of wage and hour abuse toward
20 Plaintiffs and Class Members. The common issues arising from this conduct that affect Plaintiffs
21 and Class Members predominate over any individual issues. Adjudication of these common issues
22 in a single action has important and desirable advantages of judicial economy.

23 **SUPERIORITY OF CLASS ACTION**

24 41. A class action is superior to other available methods for the fair and efficient
25 adjudication of this controversy because individual litigation of the claims of all Class Members is
26 impracticable. Even if every Class Member could afford individual litigation, the court system
27 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
28 cases would proceed. Individualized litigation would also present the potential for varying,

1 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
2 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
3 individual actions by Class Members may establish inconsistent standards of conduct for
4 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
5 the issues presented herein, presents fewer management difficulties, conserves the resources of the
6 parties and the court system, and protects the rights of each Class Member.

7 42. Defendants have acted or refused to act in respects generally applicable to the Class,
8 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
9 herein.

10 **PUBLIC POLICY CONSIDERATIONS**

11 43. Employers in the State of California violate employment and labor laws every day.
12 Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation.
13 Former employees are fearful of bringing actions because they believe their former employers
14 might damage their future endeavors through negative references and/or other means. Class actions
15 provide Class Members who are not named in the action with a type of anonymity that allows for
16 the vindication of their rights while affording them privacy protections.

17 **FIRST CAUSE OF ACTION**

18 **(FAILURE TO PAY ALL WAGES)**

19 **(Against All Defendants)**

20 44. Plaintiffs incorporate by reference all previous paragraphs of this FAC as though
21 fully set forth herein.

22 45. At all relevant times, Defendants had a duty to comply with Labor Code sections
23 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC Wage Orders and
24 California Code of Regulations.

25 46. Labor Code section 204 and the IWC Wage Orders require timely payment of all
26 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
27 designated in advance by the employer as the regular paydays. All wages earned in excess of the
28 normal work period must be paid no later than the payday for the next regular payroll period.

1 47. Labor Code section 206 provides that in case of a dispute over wages, the employer
2 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving
3 to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

4 48. At all times relevant, Labor Code section 510, and applicable sections of the
5 California Code of Regulations and the IWC Wage Orders applied to Plaintiffs' work with
6 Defendants and continue to apply to Class Members' employment with Defendants. Labor Code
7 section 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders
8 state that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek
9 must be paid at one and one-half times the employee's regular rate of pay. Any work performed in
10 excess of 12 hours in a workday must be compensated at the rate of no less than twice the regular
11 rate of pay for an employee.

12 49. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid
13 to all employees in California for all hours worked. Local minimum wage ordinances, may provide
14 for higher minimum wage rates that must be paid to employees for all hours worked in those locales
15 where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay
16 less than the state or local minimum wage, whichever is higher, for any hour of work.

17 50. Labor Code section 1194 provides that any employee receiving less than the legal
18 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
19 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
20 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

21 51. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an
22 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

23 52. Labor Code section 1198 prohibits employers from employing for longer hours or
24 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
25 set by the Labor Commissioner.

26 53. Plaintiffs are informed, believe, and thereon allege that during the Class Period,
27 Plaintiffs and Class Members regularly worked over eight (8) hours, 10 hours, and/or 12 hours per
28 workday and/or over 40 hours per workweek.

54. Plaintiffs are informed, believe, and thereon allege that during the Class Period, Defendants failed to pay Plaintiffs and Class Members all wages for hours worked (including minimum, regular, overtime, and double time wages) by unlawfully editing timecards, automatically deducting meal periods when a proper meal period was not taken, rounding hours worked including meal periods, and requiring off-the-clock work without compensation, among other things.

55. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs and Class Members have sustained and continue to sustain damages, including loss of earnings from minimum, regular, overtime, and double time compensation due, in an amount to be established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

56. WHEREFORE, Plaintiffs and the Class Members they seek to represent request relief as described herein and below.

SECOND CAUSE OF ACTION

(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU

THEREOF)

(Against All Defendants)

57. Plaintiffs incorporate by reference all previous paragraphs of this FAC as though fully set forth herein.

58. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

59. Labor Code section 512 and Section 11 of the IWC Wage Orders prohibit an employer from employing any person for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes (commencing before the employee's fifth hour of work), except that if the total work period per day is no more than 6 hours, the meal period may be waived by mutual consent of the employer and employee. A second meal period of not less than 30 minutes is required if an employee works more than 10 hours per day and must begin before the employee's tenth hour of work, except if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and

1 employee, but only if the first meal period was not waived.

2 60. Section 11 of the applicable IWC Wage Orders state that “[u]nless the employee is
3 relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
4 duty’ meal period and counted as time worked.”

5 61. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
6 requiring any employee to work during a meal period mandated by any California statute,
7 regulation, standard or order. If an employer fails to provide an employee with a meal period in
8 accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the
9 employer pay the employee one additional hour of pay at the employee’s regular rate of
10 compensation for each workday that the meal period is noncompliant.

11 62. Throughout the Class Period, Plaintiffs and Class Members did not receive
12 compliant meal periods when working more than five (5) hours and/or 10 hours per workday
13 because their first and second meal periods were missed, late, interrupted, short, and/or not free of
14 all duties. In addition, Defendants rounded Plaintiffs’ and Class Members’ meal periods.

15 63. During the Class Period, Defendants failed to pay Plaintiffs and Class Members
16 meal period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and
17 the applicable IWC Wage Order and California Code of Regulations.

18 64. Plaintiffs are informed, believe, and thereon allege that Class Members did not
19 voluntarily waive their meal periods.

20 65. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
21 herein, Plaintiffs and Class Members have sustained and continue to sustain damages, including
22 loss of premium pay for meal period violations and earnings, in an amount to be established at trial,
23 plus prejudgment interest pursuant to statute. To the extent such unpaid premiums or meal period
24 violations are deemed unpaid wages, Plaintiffs will also seek attorneys’ fees and costs pursuant to
25 statute.

26 66. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
27 relief as described herein and below.

28 ///

THIRD CAUSE OF ACTION
(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU
THEREOF)
(Against All Defendants)

67. Plaintiffs incorporate by reference all previous paragraphs of this FAC as though fully set forth herein.

68. At all relevant times, Defendants had a duty to comply with Labor Code section 226.7 and the applicable IWC Wage Orders and California Code of Regulations.

69. Labor Code section 226.7(a) states “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

70. Section 12 of the applicable IWC Wage Order provides in relevant part that:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

71. Plaintiffs are informed, believe, and thereon allege that during the Class Period, Plaintiffs and Class Members worked in excess of three-and-a-half (3.5) hours, six (6) hours, and/or 10 hours per workday.

72. During the Class Period, Plaintiffs and Class Members did not receive compliant 10-minute rest periods for every four (4) hours worked or major fraction thereof because rest breaks were missed, interrupted, shortened, and/or not free of all duties.

73. During the Class Period, Defendants failed to pay Plaintiffs and Class Members rest

1 period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
2 applicable IWC Wage Order.

3 74. As a direct and proximate result of Defendants' unlawful conduct, as set forth
4 herein, Plaintiffs and Class Members have sustained and continue to sustain damages, including
5 loss of earnings, in an amount to be established at trial plus prejudgment interest pursuant to statute.
6 To the extent such unpaid premiums or rest period violations are deemed unpaid wages, Plaintiffs
7 will also seek attorneys' fees and costs pursuant to statute.

8 75. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
9 relief as described herein and below.

10 **FOURTH CAUSE OF ACTION**

11 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

12 **(Against All Defendants)**

13 76. Plaintiffs incorporate by reference all previous paragraphs of this FAC as though
14 fully set forth herein.

15 77. At all relevant times, Defendants had a duty to comply with Labor Code section 226
16 and the applicable IWC Wage Orders and California Code of Regulations.

17 78. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
18 of wages, employers must furnish each employee with an accurate itemized wage statement in
19 writing that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the
20 number of any piece-rate units earned and all applicable piece rates, (4) all deductions made from
21 wages, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name and last four
22 digits or employment identification number of the employee, (8) the name and address of the legal
23 entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding
24 number of hours worked at each hourly rate.

25 79. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of
26 a knowing and intentional failure by an employer to provide an accurate itemized wage statement
27 to recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each
28 violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee,

1 in addition to an award of costs and attorneys' fees.

2 80. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
3 showing, among other things, when the employee begins and ends each work period, meal periods
4 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
5 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs
6 and Class Members. Plaintiffs are informed, believe, and thereon allege that Defendants have
7 knowingly and intentionally failed to comply with the IWC Wage Orders.

8 81. Throughout the Class Period, Defendants provided wage statements that did not
9 accurately reflect the total number of hours worked by Plaintiffs and Class Members at each
10 corresponding pay rate, and the gross and net wages earned, among other things, making it difficult
11 for Plaintiffs and Class Members to determine whether they were paid correctly for all hours
12 worked, which deductions were made, and the extent of any underpayment. Plaintiffs have had to
13 file this lawsuit in order to determine the extent of the underpayment of wages, thereby causing
14 Plaintiffs to incur expenses and lost time. Plaintiffs would not have had to engage in these efforts
15 and incur these costs had Defendants provided the accurate wages earned. This has also delayed
16 Plaintiffs' ability to demand and recover the underpayment of wages from Defendants. Defendants'
17 violations of Labor Code section 226(a) prevented Plaintiffs and Class Members from knowing,
18 understanding and disputing the wages paid to them, and resulted in an unjustified economic
19 enrichment to Defendants.

20 82. Defendants knowingly and intentionally failed to provide accurate, itemized wage
21 statements to Plaintiffs and Class Members, and as such Plaintiffs and Class Members are deemed
22 to have suffered injury in accordance with Labor Code section 226. Plaintiffs and the Class are
23 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

24 83. Plaintiffs and Class Members are also entitled to injunctive relief under Labor Code
25 section 226(h), compelling Defendants to comply with Labor Code section 226, and seek the
26 recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

27 84. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
28 relief as described herein and below.

FIFTH CAUSE OF ACTION
(WAITING TIME PENALTIES)
(Against All Defendants)

85. Plaintiffs incorporate by reference all previous paragraphs of this FAC as though fully set forth herein.

86. At all relevant times, Defendants had a duty to comply with Labor Code sections 201, 202, and 203, and the applicable IWC Wage Orders and California Code of Regulations. Defendants failed to comply with these final paycheck requirements with respect to Plaintiff Robert Rosas and the Waiting Time SubClass Members.

87. Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

88. Labor Code section 202 requires that if “an employee not having a written contract for a definite period” quits, the employee’s wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

89. Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, any wages of an employee who is discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced, but that the wages shall not continue for more than 30 days per employee.

90. Plaintiffs are informed, believe, and thereon allege, that at all relevant times, Defendants willfully failed to timely pay Plaintiff Robert Rosas and the Waiting Time SubClass Members all of their unpaid wages earned, including, but not limited to, minimum, regular, overtime, and double time wages, compensation for non-compliant meal periods and rest periods, and unpaid reimbursements upon separation of employment. Plaintiff Robert Rosas and the Waiting Time SubClass Members are entitled to timely compensation upon separation of their employment for any outstanding unpaid wages and premiums but to date have not received such compensation from Defendants, therefore entitling them to penalties pursuant to Labor Code section 203.

91. As a consequence of Defendants' willful conduct in failing to pay all earned wages, Plaintiff Robert Rosas and the Waiting Time SubClass Members are entitled to up to 30 days' wages as a penalty for Defendants' failure to timely pay wages upon separation of employment, in addition to prejudgment interest, attorneys' fees, and costs in amounts that will be established at trial.

92. WHEREFORE, Plaintiffs and the Class Members they seek to represent request relief as described herein and below.

SIXTH CAUSE OF ACTION

(FAILURE TO REIMBURSE BUSINESS EXPENSES)

(Against All Defendants)

93. Plaintiffs incorporate by reference all previous paragraphs of this FAC as though fully set forth herein.

94. At all relevant times, Defendants had a duty to comply with Labor Code sections 2800 and 2802 and the applicable IWC Wage Orders and California Code of Regulations.

95. Labor Code section 2800 requires employers to indemnify employees for losses caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiffs and Class Members failed to request, demand, notify or otherwise seek reimbursement for their expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiffs and Class Members due to their own negligence.

96. Labor Code section 2802(a) requires that employers indemnify and reimburse employees for all business expenses, which are defined as all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred based on the employee's obedience to the employer's directions. Labor Code section 2802(b) authorizes employees to recover in a court action interest which shall accrue from the date on which the employee incurred the necessary expenditure or loss. Labor Code section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor Code section 2802, to also recover attorneys' fees and costs.

97. During the Class Period, Defendants required Plaintiffs and Class Members to use

1 their personal cell phones without reimbursement.

2 98. Defendants have unfairly and unlawfully violated Labor Code sections 2800 and
3 2802, and the applicable IWC Wage Orders by failing to reimburse Plaintiffs and Class Members
4 for all of their out-of-pocket business expenses incurred in the discharge of their job duties.

5 99. As a consequence of Defendants' willful conduct, Plaintiffs and Class Members
6 have sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be
7 established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

8 100. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
9 relief as described herein and below.

10 **SEVENTH CAUSE OF ACTION**

11 **(UNFAIR BUSINESS PRACTICES)**

12 **(Against All Defendants)**

13 101. Plaintiffs incorporate by reference all previous paragraphs of this FAC as though
14 fully set forth herein.

15 102. California Business & Professions Code Section 17200, *et seq.* prohibits unfair
16 competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

17 103. Defendants' conduct, as alleged herein, has been and continues to be unfair,
18 unlawful and harmful to Plaintiffs, Class Members, and Defendants' competitors. Plaintiffs seek to
19 enforce important rights affecting the public interest within the meaning of California Code of Civil
20 Procedure section 1021.5.

21 104. Defendants' activities, as alleged herein, violate California law and constitute
22 unlawful business acts or practices in violation of California Business and Professions Code
23 sections 17200, *et seq.*

24 105. A violation of Business and Professions Code sections 17200, *et seq.* may be
25 predicated on the violation of any state or federal law.

26 106. Plaintiffs brings this action on behalf of themselves and all members of the general
27 public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below
28 constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of

1 the UCL. Defendants' policies and practices have violated state law in at least the following
2 respects:

3 (a) Failing to pay all minimum, regular, overtime, and double time wages due
4 to Plaintiffs and Class Members in violation of Labor Code sections 204, 206, 510, 1182.12, 1194,
5 1194.2, 1197, and 1198;

6 (b) Failing to provide compliant meal periods or compensation in lieu thereof in
7 violation of Labor Code sections 226.7 and 512;

8 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
9 thereof in violation of Labor Code section 226.7;

10 (d) Intentionally failing to provide Plaintiffs and Class Members with accurate
11 itemized wage statements in violation of Labor Code section 226;

12 (e) Failing to timely pay all earned wages to Plaintiff Robert Rosas and the
13 Waiting Time SubClass Members upon separation of employment in violation of Labor Code
14 sections 201, 202 and 203;

15 (f) Failing to reimburse Plaintiffs and Class Members all necessary business
16 expenses in violation of Labor Code sections 2800 and 2802; and

17 (g) Violations of the IWC Wage Orders for the same conduct above.

18 107. Defendants' course of conduct, acts, and practices in violation of California law
19 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
20 conduct described herein violates the policy or spirit of such laws or otherwise significantly
21 threatens or harms competition. The substantial harm to Plaintiffs and Class Members in being
22 wrongfully denied earned wages, meal and rest periods, premium pay, and reimbursements
23 outweighs the utility, if any, of Defendants' policies or practices and, therefore, Defendants' actions
24 described herein constitute an unfair business practices or acts within the meaning of the UCL.

25 108. Plaintiffs further bring this cause of action on behalf of the proposed Class, seeking
26 statutory and injunctive relief to stop the misconduct of Defendants, as complained herein, and to
27 compel restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and
28 premiums, etc.) obtained by Defendants through the unfair and unlawful business practices

described herein pursuant to, *inter alia*, Business and Professions Code sections 17202, 17203, and 17208. Under the circumstances alleged, it would be inequitable and result in a miscarriage of justice for Defendants to continue to retain the property of Plaintiffs and Class Members.

109. Defendants' failure to adopt and implement policies in accordance with and/or adhere to these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair competitive advantage for Defendants against its competitors, thereby constituting an unfair business practice, as set forth in the UCL.

110. Pursuant to California Business and Professions Code section 17203, as a direct and proximate result of the unfair business practices of Defendants, Plaintiffs, individually, and on behalf of all employees similarly situated, are entitled to equitable and injunctive relief, against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiffs also seek an order enjoining Defendants to cease and desist from engaging in the practices described herein.

111. Plaintiffs and Class Members also request any other such legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper, including an injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent practices alleged in this FAC.

112. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and Class Members are entitled to and seek other appropriate relief available under California Business & Professions Code sections 17200 *et seq.* Plaintiffs, on behalf of themselves and the Class, also seek recovery of attorneys' fees and costs of this action to be paid by Defendants as provided by California Code of Civil Procedure section 1021.5.

113. WHEREFORE, Plaintiffs and the Class Members they seek to represent request relief as described herein and below.

EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

114. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as

1 though fully set forth herein.

2 115. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
3 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to
4 have been violated, and after receiving notice from the LWDA of its intention not to investigate or
5 after 65 days have passed without notice from the LWDA.

6 116. On June 30, 2021, Plaintiff Ruben Rosas gave written notice of the specified
7 provisions alleged to have been violated by Defendants SPRS, LLC and SPRS LP, including the
8 facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This
9 written notice was provided via certified mail to Defendants SPRS, LLC and SPRS LP and to the
10 LWDA by electronically filing the notice via the Department of Industrial Relations' website. More
11 than 65 days have passed since Plaintiff Ruben Rosas submitted his PAGA notice to the LWDA
12 without a response from the LWDA. Accordingly, Plaintiff Ruben Rosas may amend the Complaint
13 to add a PAGA cause of action against Defendants SPRS, LLC and SPRS LP.

14 117. On July 9, 2021, Plaintiff Ruben Rosas gave written notice of the specified
15 provisions alleged to have been violated by Defendants SPRS, LLC, SPRS LP, SRVC, and Mr.
16 Atkins, including the facts and theories to support the alleged violations, as required by Labor Code
17 section 2699.3. This written notice was provided via certified mail to Defendants SPRS, LLC,
18 SPRS LP, SRVC, and Mr. Atkins and to the LWDA by electronically filing the notice via the
19 Department of Industrial Relations' website. More than 65 days have passed since Plaintiff Ruben
20 Rosas submitted his PAGA notice to the LWDA without a response from the LWDA. Accordingly,
21 Plaintiff Ruben Rosas may amend his Complaint to add a PAGA cause of action against Defendants
22 SRVC and Mr. Atkins.

23 118. Under Labor Code section 2699.3(a)(2)(C), "Notwithstanding any other provision
24 of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action
25 arising under this part at any time within 60 days of the time periods specified in this part." More
26 than 65 days have passed since Plaintiff Ruben Rosas submitted his PAGA notice to the LWDA
27 without notice from the LWDA. Accordingly, Plaintiff Ruben Rosas may amend his Complaint as
28 a matter of right within this 60 day period as specified by Labor Code section 2699.3(a)(2)(C).

1 119. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
2 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
3 divisions, commissions, boards, agencies or employees for violation of the code may, as an
4 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
5 himself and other current or former employees pursuant to the procedures specified in Labor Code
6 section 2699.3.

7 120. For all provisions of the Labor Code except those for which a civil penalty is
8 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
9 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
10 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
11 pay period in which Defendants violated these provisions of the Labor Code.

12 121. Pursuant to Labor Code sections 2699.3 and 2699.5, Plaintiff Ruben Rosas may seek
13 civil penalties for any alleged violation of the following provisions: subdivision (k) of Section 96,
14 Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
15 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223,
16 and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections
17 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section
18 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of
19 Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603,
20 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026,
21 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197,
22 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292,
23 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5,
24 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55,
25 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,
26 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and
27 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
28 subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

1 122. Defendants' conduct violates numerous Labor Code sections, including, but not
2 limited to, the following:

3 123. Violation of Labor Code sections 201-204, 206, 210, 510, 558, 1194, 1197, 1197.1,
4 and 1198 for failure to timely pay all earned wages (including minimum, regular, overtime, and
5 double time wages) owed to Plaintiffs and other aggrieved employees during employment and upon
6 separation of employment as herein alleged;

7 124. Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods
8 to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed meal
9 periods as herein alleged;

10 125. Violation of Labor Code sections 226.7 for failure to permit rest breaks to Plaintiffs
11 and other aggrieved employees and failure to pay premium wages for missed rest periods as herein
12 alleged;

13 126. Violation of Labor Code sections 226 and 226.3 for failure to provide accurate
14 itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged;

15 127. Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate
16 records regarding the employment of Plaintiffs and other aggrieved employees as herein alleged;
17 and

18 128. Violation of Labor Code section 2800 and 2802 for failure to reimburse Plaintiffs
19 and other aggrieved employees for business expenses;

20 129. Labor Code Section 226.3 provides: "[a]ny employer who violates subdivision (a)
21 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
22 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
23 each violation in a subsequent citation, for which the employer fails to provide the employee a
24 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
25 The civil penalties provided for in this section are in addition to any other penalty provided by law."

26 130. Labor Code section 558(a) provides "[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provision regulating hours and days of work in any order of the Industrial Welfare Commission

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
2 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
3 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
4 for which the employee was underpaid.”

5 131. Labor Code section 558.1 provides that any “employer or other person acting on
6 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
7 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
8 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor Code], may
9 be held liable as the employer for such violation.”

10 132. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
11 maintain accurate and complete payroll records showing the hours worked daily by and the wages
12 paid to employees.

13 133. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
14 either individually or as an officer, agent, or employee of another person, who pays or causes to be
15 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
16 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
17 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
18 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
19 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
20 pay period for which the employee is underpaid regardless of whether the initial violation is
21 intentionally committed.

22 134. As set forth above, Defendants have violated numerous provisions of the Labor
23 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
24 Ruben Rosas also seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 for
25 himself, the underpaid employees, and the State of California.

26 135. Plaintiff Ruben Rosas is an “aggrieved employee” because he was employed by the
27 alleged violators and had one or more of the alleged violations committed against him, and therefore
28 is properly suited to represent the interests of all other aggrieved employees.

136. Plaintiff Ruben Rosas has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under the PAGA.

137. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff Ruben Rosas is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

138. For bringing this action, Plaintiff Ruben Rosas is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class and other aggrieved employees, pray for judgment and the following specific relief against Defendants, jointly and severally, as follows:

1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses as appropriate under California Code of Civil Procedure section 382;

2. That Plaintiffs be appointed as the Class Representatives;

3. That Jose Garay, APLC and the Law Office of Daniel J. Hyun be appointed as Class Counsel for all purposes;

4. For compensatory damages in an amount according to proof with interest thereon;

5. For such general, economic, and/or special damages in an amount according to proof with interest thereon;

6. For damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;

7. For waiting time penalties pursuant to Labor Code section 203;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For PAGA penalties;

10. For the amounts provided for in Labor Code section 226.7;

11. For attorney's fees, costs of suit, including expert fees, and interest pursuant to

1 Labor Code sections 218.6, 226, 1194, 2698 *et seq.*, 2802 and California Code of Civil Procedure
2 section 1021.5;

3 12. For restitution to Plaintiffs and Class Members of all money and property unlawfully
4 acquired by Defendants through unfair or unlawful business practices pursuant to Business and
5 Professions Code sections 17200 *et seq.*;

6 13. For an order requiring Defendants to restore and disgorge all funds to each employee
7 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
8 and, therefore, constituting unfair competition under Business and Professions Code sections
9 17200, *et seq.*;

10 14. For liquidated damages pursuant to Labor Code section 1194.2;

11 15. For permanent injunctive relief described in the UCL cause of action;

12 16. For prejudgment interest on all sums recovered pursuant to Labor Code
13 section 218.6, California Civil Code sections 3287 and 3289, and applicable law;

14 17. For post judgment interest on all amounts awarded to Plaintiffs and Class Members
15 as provided by law;

16 18. A declaratory judgment that the practices complained of herein are unlawful under
17 California law;

18 19. Such other equitable relief as the Court may deem proper; and

19 20. An award of such other and further relief as this Court may deem appropriate.

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21 Dated: September 17, 2021

JOSE GARAY, APLC/
LAW OFFICE OF DANIEL J. HYUN

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By: _____

25 Jose R. Garay
26 Daniel J. Hyun
27 Shelly D. Song
28 Attorneys for Plaintiffs RUBEN ROSAS and
ROBERT ROSAS

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Dated: September 17, 2021



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