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ELECTRONICALLY FILED
Superior Court of California
County of Alameda
10/25/2021

Chad Finke, Executive Officer / Clerk of the Court

By: Suzanne Pesko Deputy

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11 WALTER FINE, individually, and on
12 behalf of other members of the general
public similarly situated,

13 Plaintiff,

14 vs.

15 CONSERVATION SOCIETY OF
16 CALIFORNIA, a California corporation,
and DOES 1 through 10, inclusive,

17 Defendants.
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Case No.: RG21110152

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code § 227.3 (Failure to Pay Vested Vacation Time and Paid Time Off Upon Termination);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (9) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day

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- of Rest in Seven);
- (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (11) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Walter Fine, individually and on behalf of all other members of the public
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants filed a Statement of
5 Information form with the California Secretary of State designating a principal place of business
6 in Oakland, County of Alameda, in accordance with California Corporations Code section
7 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants
8 employ persons in this county, and employed Plaintiff in this county, and thus a substantial
9 portion of the transactions and occurrences related to this action occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff Walter Fine is a resident of Oakland, in Alameda County, California.
12 Defendants employed Plaintiff as an hourly paid, non-exempt Security Officer from
13 approximately March 2019 to December 2020. Plaintiff worked for Defendants at the
14 Oakland Zoo located in Oakland, California. During his employment, Plaintiff typically
15 worked eight (8) to twelve (12) hours or more per day, and five (5) or more days per week.
16 Plaintiff's primary job duties included, without limitation, patrolling the zoo premises,
17 ensuring buildings were locked and secured, and responding to alarms and incidents.

18 5. CONSERVATION SOCIETY OF CALIFORNIA was and is, upon information
19 and belief, a California corporation, and at all times hereinafter mentioned, an employer
20 whose employees are engaged throughout this county, the State of California, or the various
21 states of the United States of America.

22 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
23 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
24 amend the complaint and serve such fictitiously named Defendants once their names and
25 capacities become known.

26 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
27 were the partners, agents, owners, or managers of CONSERVATION SOCIETY OF
28 CALIFORNIA, at all relevant times.

1 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
2 acts and omissions alleged herein was performed by, or is attributable to, CONSERVATION
3 SOCIETY OF CALIFORNIA and/or DOES 1 through 10 (collectively, “Defendants” or
4 “OAKLAND ZOO”) each acting as the agent, employee, alter ego, and/or joint venturer of, or
5 working in concert with, each of the other co-Defendants and was acting within the course and
6 scope of such agency, employment, joint venture, or concerted activity with legal authority to
7 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
8 represent, the official policy of Defendants.

9 9. At all relevant times, Defendants, and each of them, ratified each and every act
10 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
11 and abetted the acts and omissions of each and all the other Defendants in proximately causing
12 the damages herein alleged.

13 10. Plaintiff is informed and believes, and thereon alleges, that each of said
14 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
15 omissions, occurrences, and transactions alleged herein.

16 **PAGA REPRESENTATIVE ALLEGATIONS**

17 1. At all times herein set forth, PAGA provides that any provision of law under
18 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
19 assessed and collected by the LWDA for violations of the California Labor Code and
20 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
21 civil action brought on behalf of themselves and other current or former employees pursuant
22 to procedures outlined in California Labor Code section 2699.3.

23 2. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
24 person who was employed by the alleged violator and against whom one or more of the
25 alleged violations was committed.”

26 3. Plaintiff and other current and former employees of Defendants are “aggrieved
27 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
28 or former employees and one or more of the alleged violations were committed against them.

1 4. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
2 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
3 following requirements have been met:

4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of
6 the specific provisions of the California Labor Code alleged to have
7 been violated, including the facts and theories to support the alleged
8 violation.

9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).

12 (c) The LWDA shall notify the employer and the aggrieved employee or
13 representative by certified mail that it does not intend to investigate the
14 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
15 the postmark date of the aggrieved employee's notice. Upon receipt of
16 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
17 (65) calendar days of the postmark date of the aggrieved employee's
18 notice, the aggrieved employee may commence a civil action pursuant
19 to California Labor Code section 2699 to recover civil penalties.

20 5. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
21 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
22 provision other than those listed in Section 2699.5 after the following requirements have been
23 met:

24 (a) The aggrieved employee or representative shall give written notice by
25 online filing with the LWDA and by certified mail to the employer of
26 the specific provisions of the California Labor Code alleged to have
27 been violated (other than those listed in Section 2699.5), including the
28 facts and theories to support the alleged violation.

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(c) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The employer may cure the alleged violation within thirty-three (33)
5 calendar days of the postmark date of the notice sent by the aggrieved
6 employee or representative. The employer shall give written notice
7 within that period of time by certified mail to the aggrieved employee or
8 representative and by online filing with the LWDA if the alleged
9 violation is cured, including a description of actions taken, and no civil
10 action pursuant to Section 2699 may commence. If the alleged violation
11 is not cured within the 33-day period, the aggrieved employee may
12 commence a civil action pursuant to Section 2699.

13 6. On August 19, 2021, Plaintiff provided written notice by online filing to the
14 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
15 Code alleged to have been violated, including facts and theories to support the alleged
16 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
17 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
18 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
19 Plaintiff PAGA Case Number LWDA-CM-809334-20. A true and correct copy of Plaintiff's
20 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

21 7. As of the filing date of this complaint, over 65 days have passed since Plaintiff
22 sent the notice described above to the LWDA, and the LWDA has not responded that it
23 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

24 8. Thus, Plaintiff has satisfied the administrative prerequisites under California
25 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
26 violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 227.3,
27 226.7, 510, 512(a), 516, 551, 552, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and
28 2802.

9. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

10. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

11. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

12. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 227.3, 226.7, 510, 512(a), 516, 551, 552, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

GENERAL ALLEGATIONS

13. Defendants manage and operate the Oakland Zoo and provide animal care and education and conservation programs. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Oakland, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

1 14. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new-hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions. Upon
6 information and belief, Defendants set forth uniform policies and procedures in several
7 documents provided at an employee's time of hire.

8 15. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their company headquarters in Oakland, California, which processes payroll for
10 all non-exempt, hourly paid employees working for Defendants at their various locations and
11 jobsites in California, including Plaintiff and class members. Based upon information and
12 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
13 employees in California, irrespective of their work locations. Upon information and belief,
14 Defendants process payroll for departing employees in the same manner throughout the State
15 of California, regardless of the manner in which each employee's employment ends.

16 16. Defendants continue to employ non-exempt or hourly paid employees in
17 California.

18 17. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
20 and advisors knowledgeable about California labor and wage law, employment and personnel
21 practices, and about the requirements of California law.

22 18. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
23 members were not paid for all hours worked because all hours worked were not recorded.

24 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive certain wages for
26 overtime compensation and that they were not receiving certain wages for overtime
27 compensation.

28 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive at least minimum
2 wages for compensation and that they were not receiving at least minimum wages for work
3 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
4 and class members were not paid at least minimum wages for work done off-the-clock.

5 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to meal periods in
7 accordance with the California Labor Code and applicable IWC Wage Order or payment of
8 one (1) additional hour of pay at their regular rates of pay when they were not provided with
9 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
10 were not provided with all meal periods or payment of one (1) additional hour of pay at their
11 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
12 period.

13 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to rest periods in
15 accordance with the California Labor Code and applicable IWC Wage Order or payment of
16 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
17 permitted to take a compliant rest period. In violation of the Labor Code, Plaintiff and class
18 members were not authorized and permitted to take compliant rest periods, nor did Defendants
19 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
20 regular rates of pay when they were not authorized and permitted to take a compliant rest
21 period.

22 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive complete and
24 accurate wage statements in accordance with California law. In violation of the California
25 Labor Code, Plaintiff and class members were not provided complete and accurate wage
26 statements.

27 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that they had a duty to maintain accurate and complete payroll records in

1 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
2 and intentionally failed to do so.

3 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to payment of all vested
5 vacation wages upon termination of employment. In violation of the California Labor Code,
6 Plaintiff and class members did not receive payment of all vested vacation wages due.

7 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to timely payment of all
9 wages earned upon termination of employment. In violation of the California Labor Code,
10 Plaintiff and class members did not receive payment of all wages due, including, but not
11 limited to, overtime wages, minimum wages, vested vacation wages, and/or meal and rest
12 period premiums, within permissible time periods.

13 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of wages
15 during their employment. In violation of the California Labor Code, Plaintiff and class
16 members did not receive payment of all wages, including, but not limited to, overtime wages,
17 minimum wages, and/or meal and rest period premiums, within permissible time periods.

18 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to one day's rest in seven.
20 In violation of the California Labor Code, Defendants required Plaintiff and class members to
21 work more than six consecutive days without a day of rest, where the total hours worked
22 exceeded 30 hours in any week or six hours in any one day thereof.

23 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive full
25 reimbursement for all business-related expenses and costs they incurred during the course and
26 scope of their employment and that they did not receive full reimbursement of applicable
27 business-related expenses and costs incurred.

28 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment to protect their life, safety, and health in the workplace, but willfully, knowingly, and intentionally failed to do so.

31. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class members that they were properly denied wages, all in order to increase Defendants' profits.

CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

33. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

34. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

35. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

36. Members of the Class and Subclass are referred to herein as "class members."

37. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

38. There are common questions of law and fact as to class members that

predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (d) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay Plaintiff and class members all vested vacation time as wages at their final rate in accordance with the terms and conditions of Defendants' employment contract and/or policy;
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, vested vacation wages, and meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and meal and rest period premiums due to Plaintiff and class members during their employment;
- (j) Whether Defendants failed to provide Plaintiff and class members one day's rest in seven;
- (k) Whether Defendants failed to reimburse Plaintiff and class members for

necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

- (l) Whether Defendants failed to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

39. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement.

1 Plaintiff has incurred, and throughout the duration of this action, will
2 continue to incur costs and attorneys' fees that have been, are, and will
3 be necessarily expended for the prosecution of this action for the
4 substantial benefit of each class member.

5 (d) Superiority: The nature of this action makes the use of class action
6 adjudication superior to other methods. A class action will achieve
7 economies of time, effort, and expense as compared with separate
8 lawsuits, and will avoid inconsistent outcomes because the same issues
9 can be adjudicated in the same manner and at the same time for the
10 entire class.

11 (e) Public Policy Considerations: Employers in the State of California
12 violate employment and labor laws every day. Current employees are
13 often afraid to assert their rights out of fear of direct or indirect
14 retaliation. Former employees are fearful of bringing actions because
15 they believe their former employers might damage their future
16 endeavors through negative references and/or other means. Class
17 actions provide the class members who are not named in the complaint
18 with a type of anonymity that allows for the vindication of their rights
19 while simultaneously protecting their privacy.

20 **FIRST CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

22 **(Against all Defendants)**

23 40. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 41. Labor Code section 1198 makes it illegal to employ an employee under
26 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
27 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
28 shall be the . . . standard conditions of labor for employees. The employment of any employee

1 . . . under conditions of labor prohibited by the order is unlawful.”

2 42. California Labor Code section 1198 and the applicable IWC Wage Order
3 provide that it is unlawful to employ persons without compensating them at a rate of pay
4 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
5 number of hours worked by the person on a daily or weekly basis.

6 43. Specifically, the applicable IWC Wage Order provides that Defendants are and
7 were required to pay Plaintiff and class members working more than eight (8) hours in a day
8 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
9 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
10 workweek.

11 44. The applicable IWC Wage Order further provides that Defendants are and were
12 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
13 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
14 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
15 employee, including nondiscretionary bonuses and incentive pay.

16 45. California Labor Code section 510 codifies the right to overtime compensation
17 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
18 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
19 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
20 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
21 in a day on the seventh (7th) day of work.

22 46. During the relevant time period, Defendants willfully failed to pay all overtime
23 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
24 class members were not paid overtime premiums for all of the hours they worked in excess of
25 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
26 hours in a week, because all hours worked were not recorded.

27 47. First, during the relevant period, Defendants had a company-wide policy and/or
28 practice of rounding or underreporting employee clock-in and clock-out times in their

1 timekeeping system to the nearest quarter (0.25) of an hour. Defendants' rounding policy
2 resulted in the failure to compensate Plaintiff and class members fully for all hours worked,
3 causing Plaintiff and class members to not be paid overtime wages for all of the overtime
4 hours they actually worked. Defendants' timekeeping practices are, and continue to be, unfair
5 and have, over time, resulted in the underpayment of wages to Plaintiff and class members.
6 To the extent Defendants' rounding policy has taken away time worked that was eligible for
7 overtime, Plaintiff and class members were denied overtime pay for all hours worked.

8 48. For example, on September 16, 2019, Plaintiff clocked in at the start of his shift
9 at 7:27 p.m. and clocked out for his meal period at 9:44 p.m., working a total of 2 hours and
10 17 minutes (or 2.28 hours); Defendant's timekeeping system rounded these times to 7:30 p.m.
11 and 9:45 p.m., for a total of 2 hours and 15 minutes (or 2.25 hours). Plaintiff then clocked
12 back in from his meal period at 10:10 p.m. and clocked out at 11:59 p.m., working a total of 1
13 hour and 49 minutes (or 1.82 hours); Defendant's timekeeping system rounded these times to
14 10:15 p.m. and 12:00 a.m., for a total of 1 hour and 45 minutes (or 1.75 hours). Finally,
15 Plaintiff clocked back in at 12:01 a.m. and then clocked out at the end of his shift at 5:00 a.m.,
16 working a total of 4 hours and 59 minutes (or 4.98 hours); Defendants' timekeeping system
17 rounded these times to 12:00 a.m. and 5:00 a.m. for a total of 5 hours. Plaintiff thus worked a
18 total of 9 hours and 5 minutes (or 9.08 hours) for the day, however, Defendants calculated this
19 time as 9.00 hours worked. Accordingly, Defendants failed to pay Plaintiff for 5 minutes of
20 work that was eligible for overtime pay.

21 49. Second, during the relevant period, upon information and belief, Defendants
22 had, and continue to have, a company-wide policy of discouraging and impeding Plaintiff and
23 class members from recording all hours worked in order to limit the amount of overtime
24 employees could accrue. For example, twice per month at the end of each pay period,
25 Defendants' management instructed Plaintiff and class members not to clock in for their entire
26 shifts in order to prevent them from accruing overtime. Defendants could have recorded this
27 off-the-clock work, but refused to do so to avoid paying Plaintiff and class members overtime
28 wages.

1 50. Third, Defendants have systematically, and on a company-wide basis,
2 understaffed their operations and thereby failed to provide adequate meal period coverage to
3 permit employees to take compliant meal periods. Additionally, due to the lack of meal
4 period coverage, Defendants required Plaintiff and class members to remain on-duty at all
5 times and on Defendants' premises during their meal periods. Because Plaintiff and class
6 members were required to remain on-duty and were restricted from leaving the premises
7 during meal periods, they were required to continue working during unpaid meal periods and
8 were denied the ability to use their meal periods freely for their own purposes. For example,
9 Plaintiff was required to remain on-duty during his meal periods to monitor access points,
10 supervise deliveries, and respond to alarms and other emergencies. Thus, Defendants
11 effectively maintained control over Plaintiff and class members and required them to perform
12 work during meal periods for which they were not paid.

13 51. Defendants also had a practice of failing to adhere to a schedule for meal
14 periods, which further caused Plaintiff and class members to not be relieved of their duties for
15 compliant meal periods. Moreover, on information and belief, because Defendants frowned
16 upon employees accruing meal period penalties, Defendants pressured Plaintiff and class
17 members to clock out for meal periods and/or adjusted employee time records to reflect
18 compliant meal periods, regardless of whether they had received a compliant meal period, in
19 order to strictly limit meal penalties that Defendants would otherwise owe. Thus, Plaintiff and
20 class members performed work during unpaid meal periods and received no compensation for
21 this time.

22 52. Fourth, Defendants had, and continue to have, a policy and/or practice of
23 requiring that Plaintiff and class members carry a company-issued cellular phone and radio at
24 all times to respond to communications from management. Defendants' management
25 contacted Plaintiff and class members on their company-issued cellular phone and/or radio
26 during unpaid meal periods to assign them tasks. For example, Plaintiff was required to
27 respond to management on his company-issued cellular phone and/or radio four (4) times per
28 week, for 2-3 minutes per instance, to discuss unlocking secured areas, supervising deliveries,

1 or responding to incidents. In addition, Defendants' management contacted Plaintiff and class
2 members on their personal cellular phones outside of their shifts to discuss work-related
3 matters. For example, Plaintiff was required to answer calls from management once per
4 month and spend 3-5 minutes discussing incidents that had occurred during his previous shift.
5 Defendants knew or should have known that Plaintiff and class members were being made to
6 respond to management while off-the-clock in order to meet Defendants' expectations, but
7 failed to compensate them for this off-the-clock work.

8 53. Defendants knew or should have known that as a result of these company-wide
9 practices and/or policies, Plaintiff and class members were performing their assigned duties
10 off-the-clock before and after their shifts and/or during meal periods, and were suffered or
11 permitted to perform work for which they were not paid. Because Plaintiff and class members
12 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
13 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
14 members were not paid overtime wages for all of the overtime hours they actually worked.

15 54. Defendants' failure to pay Plaintiff and class members the balance of overtime
16 compensation as required by California law, violates the provisions of California Labor Code
17 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
18 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
19 and attorneys' fees.

20 **SECOND CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 22 **Minimum Wages** 23 **(Against all Defendants)**

24 55. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 56. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
28 minimum wage to be paid to employees, and the payment of a wage less than the minimum so

1 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 10-2001 as
2 “the time during which an employee is subject to the control of an employer, and includes all
3 the time the employee is suffered or permitted to work, whether or not required to do so.”
4 Cal. Code. Regs. tit. 8, § 11100(2)(H) (defining “Hours Worked”).

5 57. As stated above, Defendants had a company-wide policy and/or practice of
6 rounding or underreporting Plaintiff’s and class members’ hourly clock-in and clock-out times
7 in their timekeeping system to the nearest quarter hour, resulting in the failure to compensate
8 them for all hours worked. In addition, as set forth above, due to Defendants’ company-wide
9 policies and/or practices of understaffing, requiring employees to remain on-duty and on the
10 work premises during unpaid meal periods, and failing to adhere to a schedule for meal
11 periods, Plaintiff and class members were forced to forego meal periods, have their meal
12 periods interrupted, and/or were otherwise not relieved of all duties during meal periods.
13 Moreover, as set forth above, in order to prevent employees from accruing meal period
14 penalties, upon information and belief, Defendants’ management pressured employees to
15 clock out for meal periods and/or adjusted employee time records to reflect compliant meal
16 periods, but required them to continue working, time for which they were not paid.

17 58. Furthermore, as stated, as a result of Defendants’ policy of limiting the amount
18 of overtime employees could accrue, Plaintiff and class members were instructed not to record
19 entire shifts and work off-the-clock to complete their work-related duties. Additionally, as set
20 forth above, Defendants required Plaintiff and class members to respond to communications
21 from Defendants’ management delivered over company-issued cellular phones, company-
22 issued radios, and/or personal cellular phones while off-the-clock, but did not compensate
23 them for this time.

24 59. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
25 and class members. To the extent that these off-the-clock hours did not qualify for overtime
26 premium payment, Defendants did not pay at least minimum wages for those hours worked
27 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
28 1198.

60. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

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

62. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

63. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

64. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

65. As set forth above, Defendants have systematically, and on a company-wide basis, understaffed their operations and failed to provide adequate meal period coverage to

1 permit employees to take compliant meal periods. Because there was no one available to
2 relieve Plaintiff and class members needing meal period coverage, Defendants required
3 Plaintiff and class members to remain on-duty and on Defendants' premises at all times,
4 including during their meal periods, and thus effectively maintained control over Plaintiff and
5 class members during meal periods. In conjunction with these policies and/or practices, as
6 stated above, Defendants also required that Plaintiff and class members carry and respond to
7 company-issued cellular phones and/or radios at all times and failed to adhere to a schedule
8 for meal periods, which further caused Plaintiff and class members to not be relieved of their
9 duties for compliant meal periods.

10 66. Moreover, as stated, because Defendants frowned upon employees accruing
11 meal period penalties, Defendants pressured Plaintiff and class members to clock out for meal
12 periods and/or adjusted employee time records to reflect compliant meal periods, regardless of
13 whether they had received a compliant meal period, in order to strictly limit meal penalties
14 that would need to be paid by Defendants.

15 67. Defendants' practices and policies prevented Plaintiff and class members from
16 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
17 members were forced to work in excess of five (5) hours before taking a meal period, had
18 their meal periods interrupted, and/or had to forgo their meal periods altogether. For example,
19 as stated, Defendants' management interrupted Plaintiff's meal periods 2-3 times per week by
20 contacting him on his company-issued cellular phone and/or radio to request that he unlock
21 secured areas, supervise deliveries, or respond to incidents. As another example,
22 approximately 1-2 times per week, Plaintiff was required to take his meal periods late after
23 having worked in excess of five (5) hours or more into his shift for the same reasons.
24 Moreover, Plaintiff and class members sometimes missed their meal periods entirely when
25 they were the only employee assigned to their post due to staffing shortages during overnight
26 shifts.

27 68. Additionally, Defendants did not schedule second meal periods and had no
28 policy for permitting Plaintiff and class members to take second 30-minute meal periods on

1 days that they worked in excess of ten (10) hours in one day. For example, Plaintiff would
2 work shifts in excess of ten (10) hours per day, but was not provided a second meal period
3 during these shifts. Plaintiff and class members did not sign valid meal period waivers on
4 days that they were entitled to meal periods and were not relieved of all duties.

5 69. At all times herein mentioned, Defendants knew or should have known that, as
6 a result of these policies, Plaintiff and class members were prevented from being relieved of
7 all duties and required to perform some of their assigned duties during meal periods.
8 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
9 members all meal period premiums when meal periods were late, missed, shortened, or
10 interrupted.

11 70. As set forth above, Defendants' have a company-wide policy and/or practice of
12 rounding or underreporting employee clock-in and clock-out times in their timekeeping
13 system, which prevented Plaintiff and class members from receiving all meal period premiums
14 when they took late and/or shortened meal periods. As stated, Defendants' rounding policy
15 rounded employees' clock-in and clock-out times in their timekeeping system to the nearest
16 quarter (0.25) of an hour. To the extent that Defendants' timekeeping system reported that
17 Plaintiff and class members were provided with timely, full 30-minute meal periods when, in
18 fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes,
19 Plaintiff and class members were entitled to a meal period penalty. Specifically, as stated
20 above, on September 16, 2019, Plaintiff clocked out for his meal period at 9:44 p.m. and
21 clocked back in at 10:10 p.m., taking a 26-minute meal period. However, Defendants'
22 timekeeping system rounded Plaintiff's clock-out time to 9:45 p.m. and clock-in time to 10:15
23 p.m., thus recording a compliant 30-minute meal period. Similarly, in the month of August
24 2019, Plaintiff's timecard records show that Plaintiff did not receive a compliant meal period
25 on August 1, 3, 4, 8, 11, 19, 22, 25, 26, 29, and 30, yet no corresponding meal period penalties
26 appear for these dates. Thus, Plaintiff and class members did not receive meal period
27 penalties for these improperly rounded meal periods.

28 71. Furthermore, Defendants engaged in a company-wide practice and/or policy of

1 not paying all meal period premiums owed when compliant meal periods were not provided.
2 Because of this practice and/or policy, Plaintiff and class members have not received all
3 premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to
4 provide Plaintiff and class members compliant meal periods in violation of California Labor
5 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

6 72. Defendants' conduct violates the applicable IWC Wage Order, and California
7 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
8 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
9 rate of compensation for each work day that the meal period was not provided.

10 **FOURTH CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 12 **(Against all Defendants)**

13 73. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 74. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
17 members' employment by Defendants.

18 75. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3 ½) hours.

24 76. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest
27 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
28 employer must "relinquish any control over how employees spend their break time, and

1 relieve their employees of all duties—including the obligation that an employee remain on
2 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
3 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
4 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
5 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
6 that a required rest period was not authorized and permitted.

7 77. During the relevant time period, Defendants regularly failed to authorize and
8 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
9 period worked or major fraction thereof. As with meal periods, Defendants’ policy and/or
10 practice of understaffing their operations prevented Plaintiff and class members from being
11 relieved of all duty in order to take compliant rest periods. Additionally, Defendants failed to
12 schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period
13 coverage, further led to Plaintiff and class members not being authorized and permitted to take
14 compliant rest periods. Moreover, Plaintiff and class members were expected to respond to
15 their company-issued cellular phones and/or radios at all times, including during rest periods.
16 For example, Defendants’ management interrupted Plaintiff’s rest periods three (3) times per
17 week by contacting him on his company-issued cellular phone and/or radio to request that he
18 supervise deliveries or respond to incidents.

19 78. Defendants also maintained and implemented a company-wide on-premises rest
20 period policy, which mandated that Plaintiff and class members remain on-duty and on
21 Defendants’ premises during their rest periods. Because Plaintiff and class members were
22 required to continue working and restricted from leaving Defendants’ premises during rest
23 periods, they were denied the ability to use their rest periods freely for their own purposes,
24 such as to purchase food and beverages from a nearby convenience store. For instance,
25 Plaintiff was required to remain on-duty during his rest periods to monitor access points,
26 supervise deliveries, and respond to alarms and other emergencies. Thus, Defendants
27 effectively maintained control over Plaintiff and class members during rest periods.

28 79. As a result of Defendants’ practices and policies, Plaintiff and class members

1 worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without
2 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
3 in addition to having to remain on-duty during rest periods and having his rest periods
4 interrupted, Plaintiff was informed by Defendants' management that he and other employees
5 were only entitled to two (2) rest periods per shift regardless of how many hours they worked,
6 and as a result, Plaintiff did not receive a third rest period when working shifts in excess of 10
7 hours.

8 80. Defendants have also engaged in a company-wide practice and/or policy of not
9 paying all rest period premiums owed when compliant rest periods are not authorized and
10 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
11 to pay them all rest period premiums due, in violation of Labor Code sections 226.7 and 516,
12 and the applicable IWC Wage Order.

13 81. Defendants' conduct violates the applicable IWC Wage Order and California
14 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
15 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
16 compensation for each work day that a compliant rest period was not authorized and
17 permitted.

18 **FIFTH CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 20 **Statements and Failure to Maintain Accurate Payroll Records** 21 **(Against all Defendants)**

22 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 83. At all relevant times herein set forth, California Labor Code section 226(a)
25 provides that every employer shall furnish each of his or her employees an accurate and
26 complete itemized wage statement in writing, including, but not limited to, the name and
27 address of the legal entity that is the employer, the inclusive dates of the pay period, total
28 hours worked, and all applicable rates of pay.

1 84. At all relevant times, Defendants have knowingly and intentionally provided
2 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
3 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
4 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
5 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
6 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
7 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

8 85. Because Defendants did not record the time Plaintiff and Subclass members
9 spent working off-the-clock, improperly rounded their clock-in and clock-out times, and
10 deducted time from their records for meal periods that were interrupted and/or missed (and
11 therefore time for which they should have been paid), Defendants did not list the correct
12 amount of gross wages and net wages earned by Plaintiff and Subclass members in
13 compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason,
14 Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass
15 members, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay
16 in effect during the pay period and the corresponding accurate number of hours worked at
17 each hourly rate, in violation of section 226(a)(9).

18 86. The wage statement deficiencies also include, among other things, failing to list
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
21 for which employees were paid; failing to list the name of the employee and only the last four
22 digits of his or her social security number or an employee identification number other than a
23 social security number; failing to list the name and address of the legal entity that is the
24 employer; and/or failing to state all hours worked as a result of not recording or stating the
25 hours they worked off-the-clock.

26 87. California Labor Code section 1174(d) provides that “[e]very person employing
27 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
28 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
3 applicable piece rate paid to, employees employed at the respective plants or
4 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
5 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
6 members showing the daily hours they worked and the wages paid thereto as a result of failing
7 to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and
8 Subclass members’ total hours worked.

9 88. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
11 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
12 employment of any employees for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
14 Wage Order, employers are required to keep accurate time records showing when the
15 employee begins and ends each work period and meal period. At all relevant times, as stated,
16 Defendants engaged in company-wide practices and/or policies of failing to record actual
17 hours worked, and thereby failed, on a company-wide basis, to keep accurate records of work
18 period and meal period start and stop times for Plaintiff and Subclass members, in violation of
19 section 1198. Also, as stated, Defendants engaged in a company-wide practice and/or policy
20 of falsifying Plaintiff’s and Subclass members’ time records by recording that compliant meal
21 periods were taken regardless of if or when meal periods were actually taken, and thereby
22 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.
23 Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with
24 second 30-minute meal periods to which they were entitled, Defendants kept no records of
25 meal start and end times for second meal periods.

26 89. Plaintiff and Subclass members are entitled to recover from Defendants the
27 greater of their actual damages caused by Defendants’ failure to comply with California Labor
28 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per

employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code § 227.3—Failure to Pay All Vested Vacation Time and Paid Time Off Upon Termination (Against all Defendants)

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

91. At all relevant times herein set forth, California Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken his or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

92. During the relevant time period, Defendants had a company-wide policy and practice of failing to pay Plaintiff and class members vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. For example, upon information and belief, Defendants failed to pay Plaintiff the balance of his accrued and unused vacation wages, which was 87.93 hours at the time of his termination.

93. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants all vested vacation wages at the end of their employment caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Accordingly, Plaintiff and class members are entitled to recover from Defendants their unpaid vested vacation wages due to them, plus interest.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

94. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 95. This cause of action is dependent upon, and wholly derivative of, the overtime
3 wages, minimum wages, vested vacation wages, and meal and rest period premiums that were
4 not timely paid to Plaintiff and those class members no longer employed by Defendants upon
5 their termination.

6 96. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
7 that if an employer discharges an employee, the wages earned and unpaid at the time of
8 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
9 her employment, his or her wages shall become due and payable not later than seventy-two
10 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
11 his or her intention to quit, in which case the employee is entitled to his or her wages at the
12 time of quitting.

13 97. Defendants willfully failed to pay Plaintiff and class members who are no
14 longer employed by Defendants the earned and unpaid wages set forth above, including but
15 not limited to, overtime wages, minimum wages, vested vacation wages, and/or meal and rest
16 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
17 leaving Defendants' employ.

18 98. Defendants' failure to pay Plaintiff and class members who are no longer
19 employed by Defendants their wages earned and unpaid at the time of discharge, or within
20 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
21 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
22 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
23 thirty (30) day maximum pursuant to California Labor Code section 203.

24 **EIGHTH CAUSE OF ACTION**

25 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
26 **Employment**
27 **(Against all Defendants)**

28 99. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 100. This cause of action is dependent upon, and wholly derivative of, the overtime
3 wages, minimum wages, and meal and rest period premiums that were not timely paid to
4 Plaintiff and those class members.

5 101. At all times relevant herein set forth, Labor Code section 204 provides that all
6 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
7 days, inclusive, of any calendar month, other than those wages due upon termination of an
8 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
9 the month during which the labor was performed.

10 102. At all times relevant herein, Labor Code section 204 provides that all wages
11 earned by any person in any employment between the sixteenth (16th) and the last day,
12 inclusive, of any calendar month, other than those wages due upon termination of an
13 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
14 month.

15 103. At all times relevant herein, Labor Code section 204 provides that all wages
16 earned for labor in excess of the normal work period shall be paid no later than the payday for
17 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
18 204 provides that the requirements of this section are deemed satisfied by the payment of
19 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
20 seven (7) calendar days following the close of the payroll period.

21 104. During the relevant time period, Defendants willfully failed to pay Plaintiff and
22 class members all wages due including, but not limited to, overtime wages, minimum wages,
23 and/or meal and rest period premiums, within the time periods specified by California Labor
24 Code section 204.

25 105. Defendants' failure to pay Plaintiff and class members all wages due violates
26 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
27 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

28 **NINTH CAUSE OF ACTION**

**Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day’s
Rest in Seven
(Against all Defendants)**

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

107. At all relevant times herein, California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day’s rest in seven. Additionally, California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest.

108. At all relevant times herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

109. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

110. During the relevant time period, on information and belief, Defendants sometimes scheduled Plaintiff and class members to work eight (8) or more hours per day and more than six (6) consecutive days in a workweek. For example, Defendants required Plaintiff to work seven (7) consecutive days on at least one occasion due to understaffing. Because Plaintiff and class members worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and class members may have signed purported waivers of their right to a day’s

1 rest in seven, such waivers are invalid.

2 111. Thus, during the relevant time period, and in violation of Labor Code sections
3 551 and 552, Defendants willfully caused Plaintiff and class members to work more than six
4 days in seven. Plaintiff and class members are therefore entitled to recover civil penalties
5 pursuant to Labor Code section 558.

6 **TENTH CAUSE OF ACTION**

7 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

8 **(Against all Defendants)**

9 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 113. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
12 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
13 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 221, 223,
14 224, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.
15 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
16 civil penalties for violations of those Labor Code sections not found in section 2699.5,
17 including sections 516 and 1182.12.

18 114. Defendants’ conduct, as alleged herein, violates numerous sections of the
19 California Labor Code, including, but not limited to, the following:

- 20 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
21 wage order for Defendants’ failure to compensate Plaintiff and other
22 aggrieved employees with all required overtime pay, as alleged herein;
23 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
24 and the applicable IWC wage order for Defendants’ failure to
25 compensate Plaintiff and other aggrieved employees with at least
26 minimum wages for all hours worked, as alleged herein;
27 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
28 applicable IWC wage order for Defendants’ failure to provide Plaintiff

- 1 and other aggrieved employees with meal periods, as alleged herein;
- 2 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
- 3 IWC wage order for Defendants' failure to authorize and permit
- 4 Plaintiff and other aggrieved employees to take rest periods, as alleged
- 5 herein;
- 6 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
- 7 wage order for failure to provide accurate and complete wage statements
- 8 to Plaintiff and other aggrieved employees, as alleged herein;
- 9 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
- 10 IWC wage order for failure to maintain payroll records as alleged
- 11 herein;
- 12 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
- 13 earned wages upon termination, as alleged herein;
- 14 (h) Violation of Labor Code section 204 for failure to pay all earned wages
- 15 during employment, as alleged herein;
- 16 (i) Violation of Labor Code sections 551 and 552 for failure to provide one
- 17 day's rest in seven to Plaintiff and other aggrieved employees, as
- 18 alleged herein;
- 19 (j) Violation of Labor Code section 227 for failing to pay vested vacation
- 20 time and paid time off upon termination, as set forth below; and
- 21 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
- 22 and other aggrieved employees for all business expenses necessarily
- 23 incurred, as alleged herein.

24 **ELEVENTH CAUSE OF ACTION**

25 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

26 **(Against all Defendants)**

27 115. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

28 and every allegation set forth above.

116. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 10-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

117. First, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and class members to utilize their own personal cellular phones to carry out their job duties, but failed to reimburse them for all of the costs of their work-related cellular phone expenses. Plaintiff and class members were required to use their personal cellular phones to complete their work-related tasks, such as responding to communications from Defendants’ management at all times. For example, as stated, Plaintiff was required to answer calls from management once per month and spend 3-5 minutes discussing incidents that had occurred during his previous shift. Although Defendants required Plaintiff and class members to utilize their personal cellular phones to carry out their work-related responsibilities, Defendants failed to fully reimburse them for this cost.

118. Second, Defendants, on a company-wide basis, expected Plaintiff and class members to report to work wearing clean uniforms emblazoned with Defendants’ company logo while simultaneously failing to provide employees with an adequate number of those uniforms. Because Defendants failed to provide Plaintiff and class members with a sufficient number of uniforms in relation to their scheduled shifts, Plaintiff and class members were forced to clean their uniforms frequently and incur expenses for doing so. For example, Defendants provided Plaintiff with two (2) uniform shirts and pants, despite being scheduled

1 to work five (5) or more days each week. As a result, Plaintiff was required to wash his
2 uniform shirts and pants several times each week.

3 119. Third, Defendants, on a company-wide basis, required Plaintiff and class
4 members to purchase safety equipment and personal protective equipment such as face masks,
5 which they were required to wear while at work. For example, from approximately August
6 2020 until the end of his employment, Plaintiff was forced to spend \$100.00 out-of-pocket on
7 hand sanitizer and face masks to wear at work, because Defendants frequently ran out of hand
8 sanitizer and disposable face masks. Defendants did not reimburse Plaintiff and class
9 members for the costs they incurred to purchase additional hand sanitizer and face masks.

10 120. Defendants could have provided Plaintiff and class members with the actual
11 tools for use on the job, such as company phones, laundering services, and safety equipment
12 or, Defendants could have reimbursed employees for the costs of their cellular phone,
13 laundering, and safety equipment expenses. Instead, Defendants passed these operating costs
14 off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two
15 (2) times the minimum wage.

16 121. Defendants' company-wide policy and/or practice of passing on their operating
17 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
18 have intentionally and willfully failed to reimburse Plaintiff and other class members for
19 necessary business-related expenses and costs.

20 122. Plaintiff and class members are entitled to recover from Defendants their
21 business-related expenses incurred during the course and scope of their employment, plus
22 interest.

23 **TWELFTH CAUSE OF ACTION**

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

25 **Unlawful Business Practices**

26 **(Against all Defendants)**

27 123. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 124. Defendants are “persons” as defined by California Business & Professions
2 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
3 and/or associations.

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

9 126. Defendants’ activities, as alleged herein, are violations of California law, and
10 constitute unlawful business acts and practices in violation of California Business &
11 Professions Code sections 17200, *et seq.*

12 127. A violation of California Business & Professions Code sections 17200, *et seq.*
13 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
14 policies and practices have violated state law in at least the following respects:

- 15 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
16 class members, to work overtime without paying them proper
17 compensation in violation of California Labor Code sections 510 and
18 1198 and the applicable IWC Order, as alleged herein;
- 19 (b) Failing to pay at least minimum wage to Plaintiff and class members in
20 violation of California Labor Code sections 1182.12, 1194, 1197,
21 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 22 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
23 members in violation of California Labor Code sections 226.7, 512(a),
24 516, 1198, and the applicable IWC Order, as alleged herein;
- 25 (d) Failing to authorize and permit Plaintiff and class members to take
26 uninterrupted rest periods in violation of California Labor Code sections
27 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 28 (e) Failing to provide Plaintiff and class members with accurate wage

1 statements and failing to maintain accurate payroll records in violation
2 of California Labor Code sections 226(a), 1174(d), 1198, and the
3 applicable IWC Order, as alleged herein;

4 (f) Failing to pay all vested vacation wages to Plaintiff and class members
5 in violation of California Labor Code 227.3, as alleged herein;

6 (g) Failing timely to pay all earned wages to Plaintiff and class members in
7 violation of California Labor Code section 204, as alleged herein;

8 (h) Failing to provide one day's rest in seven to Plaintiff and class members
9 in violation of California Labor Code sections 551 and 552, as alleged
10 herein;

11 (i) Failing to reimburse Plaintiff and class members for all business
12 expenses necessarily incurred in violation of California Labor Code
13 sections 2802, as alleged herein; and

14 (j) Failing to provide Plaintiff and class members with safety devices and
15 safeguards, such as personal protective equipment in violation of
16 California Labor Code sections 6401 and 6403, as set forth below.

17 128. At all relevant times herein, California Labor Code section 6401 provides that
18 employers must furnish and use safety devices and safeguards, and adopt and use practices,
19 means, methods, operations, and processes which are reasonably adequate to render the
20 employment and place of employment safe and healthy. California Labor Code Section 6401
21 further provides that an employer must do everything reasonably necessary to protect the life,
22 safety and health of its employees. California Labor Code section 6403(a) requires that
23 employers provide and use safety devices and safeguards reasonably adequate to render the
24 employment and place of employment safe.

25 129. Defendants, on a company-wide basis, failed to adequately provide Plaintiff
26 and class members with an adequate amount of safety equipment and personal protective
27 equipment, such as hand sanitizer and face masks, to keep them safe in the workplace. For
28 example, as stated, from approximately August 2020 until the end of his employment,

1 Plaintiff was forced to purchase his own face masks and hand sanitizer at the cost of
2 approximately \$100 out-of-pocket, because Defendants did not adequately provide them to
3 employees. Thus, Defendants' failure to provide Plaintiff and class members with safety
4 devices and safeguards, including basic personal protective equipment for the workplace
5 violates Labor Code sections 6401 and 6403.

6 130. As a result of the violations of California law herein described, Defendants
7 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
8 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
9 herein.

10 131. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
11 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
12 Defendants during a period that commences four years prior to the filing of this complaint; a
13 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
14 class members; and an award of attorneys' fees pursuant to California Code of Civil
15 Procedure section 1021.5 and other applicable laws; and an award of costs.

16 **THIRTEENTH CAUSE OF ACTION**

17 **Violation of California Business & Professions Code §§ 17200, *et seq.* –** 18 **Unfair Business Practices** 19 **(Against all Defendants)**

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

22 133. Defendants are "persons" as defined by California Business & Professions
23 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
24 and/or associations.

25 134. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
26 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
27 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
28 seeks to enforce important rights affecting the public interest within the meaning of Code of

1 Civil Procedure section 1021.5.

2 135. Defendants’ activities, namely Defendants’ company-wide practice and/or
3 policy of not paying Plaintiff and class members all meal and rest period premiums due to
4 them under Labor Code section 226.7, deprived Plaintiff and class members of the
5 compensation guarantee and enhanced enforcement implemented by section 226.7. The
6 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
7 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
8 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
9 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
10 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
11 unfair business practice in violation of California Business & Professions Code sections
12 17200, *et seq.* (*Id.*)

13 136. A violation of California Business & Professions Code sections 17200, *et seq.*
14 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
15 and practices have violated the spirit of California’s meal and rest period laws and constitute
16 acts against the public policy behind these laws.

17 137. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
18 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
19 benefits implemented by section 226.7 withheld and retained by Defendants during a period
20 that commences four years prior to the filing of this complaint; a permanent injunction
21 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
22 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
23 Procedure section 1021.5 and other applicable laws; and an award of costs.

24 **REQUEST FOR JURY TRIAL**

25 Plaintiff requests a trial by jury.

26 **PRAYER FOR RELIEF**

27 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
28 against Defendants, jointly and severally, as follows:

1 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
2 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
3 reserves the right to amend his prayer for relief to seek a different amount.

4 **Class Certification**

5 2. That this case be certified as a class action;

6 3. That Plaintiff be appointed as the representative of the Class and Subclass;

7 4. That counsel for Plaintiff be appointed as class counsel.

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

9 5. That the Court declare, adjudge, and decree that Defendants violated California
10 Labor Code sections 510 and 1198 and applicable IWC Wage Order by willfully failing to pay
11 all overtime wages due to Plaintiff and class members;

12 6. For general unpaid wages at overtime wage rates and such general and special
13 damages as may be appropriate;

14 7. For pre-judgment interest on any unpaid overtime compensation commencing
15 from the date such amounts were due, or as otherwise provided by law;

16 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
17 California Labor Code section 1194(a); and

18 9. For such other and further relief as the Court may deem equitable and
19 appropriate.

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

21 10. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and applicable IWC Wage Order
23 by willfully failing to pay minimum wages to Plaintiff and class members;

24 11. For general unpaid wages and such general and special damages as may be
25 appropriate;

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

28 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to

1 California Labor Code section 1194(a);

2 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

3 15. For such other and further relief as the Court may deem equitable and
4 appropriate.

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

6 16. That the Court declare, adjudge, and decree that Defendants violated California
7 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order by
8 willfully failing to provide all meal periods to Plaintiff and class members;

9 17. That the Court make an award to the Plaintiff and class members of one (1)
10 hour of pay at each employee's regular rate of pay for each workday that a meal period was
11 not provided;

12 18. For all actual, consequential, and incidental losses and damages, according to
13 proof;

14 19. For premiums pursuant to California Labor Code section 226.7(c);

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

17 21. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

19 22. For such other and further relief as the Court may deem equitable and
20 appropriate.

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

22 23. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Order by willfully
24 failing to authorize and permit Plaintiff and class members to take all rest periods;

25 24. That the Court make an award to the Plaintiff and class members of one (1) hour
26 of pay at each employee's regular rate of pay for each workday that a rest period was not
27 authorized and permitted;

28 25. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 26. For premiums pursuant to California Labor Code section 226.7(c);

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

5 28. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 29. For such other and further relief as the Court may deem equitable and
8 appropriate.

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

10 30. That the Court declare, adjudge and decree that Defendants violated the
11 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
12 Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized
13 wage statements thereto;

14 31. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 32. For injunctive relief pursuant to California Labor Code section 226(h);

17 33. For statutory penalties pursuant to California Labor Code section 226(e);

18 34. For attorneys' fees and costs pursuant to California Labor Code section
19 226(e)(1); and

20 35. For such other and further relief as the Court may deem equitable and
21 appropriate.

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

23 36. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code section 227.3 by willfully failing to pay vested vacation wages owed at the time
25 of termination of the employment of Plaintiff and other terminated class members;

26 37. For all actual, consequential and incidental losses and damages, according to
27 proofs;

28 38. For pre-judgment interest on any unpaid wages from the date of such amounts

1 were due, or as otherwise provided by law

2 39. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 40. For such other and further relief as the Court may deem equitable and
5 appropriate.

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

7 41. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
9 vested vacation wages, and/or meal and rest period premiums owed at the time of termination
10 of the employment of Plaintiff and other terminated class members;

11 42. For all actual, consequential and incidental losses and damages, according to
12 proof;

13 43. For waiting time penalties according to proof pursuant to California Labor
14 Code section 203 for all employees who have left Defendants' employ;

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

17 45. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

19 46. For such other and further relief as the Court may deem equitable and
20 appropriate.

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

22 47. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
24 overtime wages, minimum wages, and/or meal and rest period premiums during their
25 employment;

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

28 49. For statutory penalties according to proof pursuant to California Labor Code

1 section 210;

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

4 51. For attorneys' fees pursuant to California Code of Civil Procedure section
5 1021.5, or as otherwise provided by law; and

6 52. For such other and further relief as the Court may deem equitable and
7 appropriate.

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

9 53. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code sections 551 and 552 by failing to provide a day's rest in seven, and that
11 Defendants committed said violations of the Labor Code against Plaintiff and class members;

12 54. For civil penalties for conduct occurring any time between one year prior to the
13 filing of this complaint and judgment, pursuant to California Labor Code section 558;

14 55. For pre-judgment and post-judgment interest as provided by law; and
15 For such other and further relief as the Court may deem equitable and appropriate.

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

17 56. That the Court declare, adjudge and decree that Defendants violated the
18 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
19 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
20 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
21 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
22 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
23 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
24 all earned wages upon termination); 227.3 (by failing to pay vested vacation time and paid
25 time off upon termination); 551 and 552 (by failing to provide one day's rest in seven); and
26 2802 (by failing to reimburse business expenses);

27 57. For civil penalties pursuant to California Labor Code sections 210, 225.5,
28 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor

Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 227.3, 226.7, 510, 512(a), 516, 551, 552, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

58. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 227.3, 226.7, 510, 512(a), 516, 551, 552, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

60. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

61. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

62. For unpaid business-related expenses and such general and special damages as may be appropriate;

63. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

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

65. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

66. For such other and further relief as the Court may deem equitable and appropriate.

As to the Twelfth Cause of Action

67. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to

1 take all rest periods, failing to provide Plaintiff and class members accurate and complete
2 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
3 failing to pay all vested vacation wages, failing to timely pay Plaintiff and class members all
4 earned wages during employment, failing to provide one day's rest in seven, failing to
5 reimburse Plaintiff and class members for business-related expenses, and failing to provide
6 Plaintiff and class members with safety devices and safeguards constitutes an unlawful
7 business practice in violation of California Business and Professions Code sections 17200, *et*
8 *seq.*;

9 68. For restitution of unpaid wages to Plaintiff and all class members and
10 prejudgment interest from the day such amounts were due and payable;

11 69. For the appointment of a receiver to receive, manage, and distribute any and all
12 funds disgorged from Defendants and determined to have been wrongfully acquired by
13 Defendants as a result of violations of California Business & Professions Code sections
14 17200, *et seq.*;

15 70. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
16 California Code of Civil Procedure section 1021.5; and

17 71. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Thirteenth Cause of Action**

20 72. That the Court declare, adjudge and decree that Defendants' conduct of denying
21 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
22 an unfair business practice in violation of California Business and Professions Code sections
23 17200, *et seq.*;

24 73. For restitution of the statutory benefits under section 226.7 unfairly withheld
25 from Plaintiff and class members and prejudgment interest from the day such amounts were
26 due and payable;

27 74. For the appointment of a receiver to receive, manage, and distribute any and all
28 funds disgorged from Defendants and determined to have been wrongfully acquired by

Defendants as a result of violations of California Business & Professions Code sections
17200, *et seq.*;

75. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
California Code of Civil Procedure section 1021.5;

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

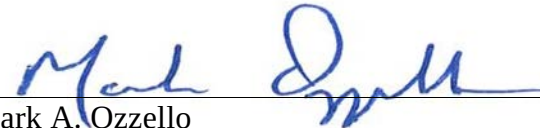
77. For such other and further relief as the Court may deem equitable and
appropriate.

Dated: October 25, 2021

Respectfully submitted,

Capstone Law APC

By:


Mark A. Ozzello
Brandon K. Brouillette
Joseph Hakakian

Attorneys for Plaintiff Walter Fine

EXHIBIT 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

August 19, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Walter Fine v. Conservation Society of California*

Dear PAGA Administrator:

This office represents Walter Fine in connection with his claims under the California Labor Code. Mr. Fine was an employee of CONSERVATION SOCIETY OF CALIFORNIA ("OAKLAND ZOO").

The employer may be contacted directly at the addresses below:

CONSERVATION SOCIETY OF
CALIFORNIA
9777 GOLF LINKS RD
OAKLAND CA 94605

CONSERVATION SOCIETY OF
CALIFORNIA
P O BOX 5238
OAKLAND CA 94605

Mr. Fine intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Fine seeks relief on behalf of himself, the State of California, and other persons who are or were employed by OAKLAND ZOO as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

OAKLAND ZOO employed Mr. Fine as an hourly paid, non-exempt Security Officer from approximately March 2019 to December 2020. During his employment, Mr. Fine typically worked (8) to twelve (12) hours or more per day, and five (5) or more days per week. Mr. Fine was compensated approximately \$16.65 per hour. His job duties included, without limitation, patrolling the zoo premises, ensuring buildings were locked and secured, and responding to alarms and incidents.

OAKLAND ZOO committed one or more of the following Labor Code violations against Mr. Fine, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

OAKLAND ZOO’S Company-Wide and Uniform Payroll and HR Practices

CONSERVATION SOCIETY OF CALIFORNIA is a California corporation that manages and operates the Oakland Zoo, and provides animal care and education and conservation programs. Upon information and belief, OAKLAND ZOO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Oakland, California, for all non-exempt, hourly paid employees working for OAKLAND ZOO in California, including Mr. Fine and other aggrieved employees. At all relevant times, OAKLAND ZOO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Fine and other aggrieved employees, regardless of its location or position.

Upon information and belief, OAKLAND ZOO maintains a centralized Payroll department at its corporate headquarters in Oakland, California, which processes payroll for all non-exempt, hourly paid employees working for OAKLAND ZOO in California, including Mr. Fine and other aggrieved employees. Further, OAKLAND ZOO issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Fine and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, OAKLAND ZOO utilized the same methods and formulas when calculating wages due to Mr. Fine and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

OAKLAND ZOO willfully failed to pay all overtime wages owed to Mr. Fine and other aggrieved employees. During the relevant time period, Mr. Fine and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Fine’s experience and counsel’s review of those records currently available relating to Mr. Fine’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Fine reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant period, OAKLAND ZOO had a company-wide policy and/or practice of rounding or underreporting employee clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. OAKLAND ZOO's rounding policy resulted in the failure to compensate Mr. Fine and other aggrieved employees fully for all hours worked, causing Mr. Fine and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. OAKLAND ZOO's timekeeping practices are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Mr. Fine and other aggrieved employees. To the extent OAKLAND ZOO's rounding policy has taken away time worked that was eligible for overtime, Mr. Fine and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant period, upon information and belief, OAKLAND ZOO had, and continues to have, a company-wide policy of discouraging and impeding Mr. Fine and other aggrieved employees from recording all hours worked in order to limit the amount of overtime employees could accrue. For example, twice per month at the end of each pay period, OAKLAND ZOO's management instructed Mr. Fine and other aggrieved employees not to clock in for their entire shifts in order to prevent them from accruing overtime. OAKLAND ZOO could have recorded this off-the-clock work, but refused to do so to avoid paying Mr. Fine and other aggrieved employees overtime wages.

Third, OAKLAND ZOO has systematically, and on a company-wide basis, understaffed its operations and thereby failed to provide adequate meal period coverage to permit employees to take compliant meal periods. Additionally, due to the lack of meal period coverage, OAKLAND ZOO required Mr. Fine and other aggrieved employees to remain on-duty at all times and on OAKLAND ZOO's premises during their meal periods. Because Mr. Fine and other aggrieved employees were required to remain on-duty and were restricted from leaving the premises during meal periods, they were required to continue working during unpaid meal periods and were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Fine was required to remain on-duty during his meal periods to monitor access points, supervise deliveries, and respond to alarms and other emergencies. Thus, OAKLAND ZOO effectively maintained control over Mr. Fine and other aggrieved employees and required them to perform work during meal periods for which they were not paid.

OAKLAND ZOO also had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Fine and other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, because OAKLAND ZOO frowned upon employees accruing meal period penalties, OAKLAND ZOO pressured Mr. Fine and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that OAKLAND ZOO would otherwise owe. Thus, Mr. Fine and other aggrieved employees performed work during unpaid meal periods and received no compensation for this time.

Fourth, OAKLAND ZOO had, and continue to have, a policy and/or practice of requiring that Mr. Fine and other aggrieved employees carry a company-issued cellular phone and/or radio at all times to respond to communications from management. OAKLAND ZOO's management contacted Mr. Fine and other aggrieved employees on their company-issued cellular phone and/or radio during unpaid meal periods to assign them tasks. For example, Mr. Fine was required to respond to management on his company-issued cellular phone and/or radio four (4) times per week, for 2-3 minutes per instance, to discuss unlocking secured areas, supervising deliveries, or responding to incidents. In addition, OAKLAND ZOO's management contacted Mr. Fine and other aggrieved

employees on their personal cellular phones outside of their shifts to discuss work-related matters. For example, Mr. Fine was required to answer calls from management once per month and spend 3-5 minutes discussing incidents that had occurred during his previous shift. OAKLAND ZOO knew or should have known that Mr. Fine and other aggrieved employees were being made to respond to management while off-the-clock in order to meet OAKLAND ZOO's expectations, but failed to compensate them for this off-the-clock work.

OAKLAND ZOO knew or should have known that as a result of these company-wide practices and/or policies, Mr. Fine and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Fine and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Fine and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, OAKLAND ZOO did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, OAKLAND ZOO paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, OAKLAND ZOO failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, OAKLAND ZOO failed to pay all overtime wages by paying a lower overtime rate than required.

OAKLAND ZOO's failure to pay Mr. Fine and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Fine and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 10-2001 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, § 11100(2)(H) (defining "Hours Worked").

As stated above, OAKLAND ZOO had a company-wide policy and/or practice of rounding or underreporting Mr. Fine's and other aggrieved employees' hourly clock-in and clock-out times in its timekeeping system to the nearest quarter hour, resulting in the failure to compensate them for all hours worked. In addition, as set forth above, due to OAKLAND ZOO's company-wide policies and/or practices of understaffing, requiring employees to remain on-duty and on the work premises during unpaid meal periods, and failing to adhere to a schedule for meal periods, Mr. Fine and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, as set forth above, in order

to prevent employees from accruing meal period penalties, OAKLAND ZOO's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Furthermore, as stated, as a result of OAKLAND ZOO's policy of limiting the amount of overtime employees could accrue, Mr. Fine and other aggrieved employees were instructed not to record entire shifts and work off-the-clock to complete their work-related duties. Additionally, as set forth above, OAKLAND ZOO required Mr. Fine and other aggrieved employees to respond to communications from OAKLAND ZOO's management delivered over company-issued cellular phones, company-issued radios, and/or personal cellular phones while off-the-clock, but did not compensate them for this time.

Thus, OAKLAND ZOO did not pay at least minimum wages for all hours worked by Mr. Fine and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, OAKLAND ZOO did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, OAKLAND ZOO regularly failed to pay at least minimum wages to Mr. Fine and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Fine and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, OAKLAND ZOO has systematically, and on a company-wide basis, understaffed its operations and failed to provide adequate meal period coverage to permit employees to take compliant meal periods. Because there was no one available to relieve Mr. Fine and other aggrieved employees needing meal period coverage, OAKLAND ZOO required Mr. Fine and other aggrieved employees to remain on-duty and on OAKLAND ZOO's premises at all times, including during their meal periods and thus effectively maintained control over Mr. Fine and other aggrieved employees during meal periods. In conjunction with these policies and/or practices, as stated above,

OAKLAND ZOO also required that Mr. Fine and other aggrieved employees carry and respond to company-issued cellular phones and/or radios at all times and failed to adhere to a schedule for meal periods, which further caused Mr. Fine and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Moreover, as stated, because OAKLAND ZOO frowned upon employees accruing meal period penalties, OAKLAND ZOO pressured Mr. Fine and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by OAKLAND ZOO.

OAKLAND ZOO's practices and policies prevented Mr. Fine and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Fine and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, as stated, OAKLAND ZOO's management interrupted Mr. Fine's meal periods 2-3 times per week by contacting him on his company-issued cellular phone and/or radio to request that he unlock secured areas, supervise deliveries, or respond to incidents. As another example, approximately 1-2 times per week, Mr. Fine was required to take his meal periods late after having worked in excess of five (5) hours or more into his shift for the same reasons. Moreover, Mr. Fine and other aggrieved employees sometimes missed their meal periods entirely when they were the only employee assigned to their post due to staffing shortages during overnight shifts.

Additionally, OAKLAND ZOO did not schedule second meal periods and had no policy for permitting Mr. Fine and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Fine would work shifts in excess of ten (10) hours per day, but was not provided a second meal period during these shifts. Mr. Fine and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, OAKLAND ZOO knew or should have known that, as a result of these policies, Mr. Fine and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. OAKLAND ZOO further knew or should have known that OAKLAND ZOO did not pay Mr. Fine and other aggrieved employees all meal period premiums when meal periods were late, missed, shortened, or interrupted.

As set forth above, OAKLAND ZOO has a company-wide policy and/or practice of rounding or underreporting employee clock-in and clock-out times in its timekeeping system, which prevented Mr. Fine and other aggrieved employees from receiving all meal period premiums when they took late and/or shortened meal periods. As stated, OAKLAND ZOO's rounding policy rounded employees' clock-in and clock-out times in their timekeeping system to the nearest quarter (0.25) of an hour. To the extent that OAKLAND ZOO's timekeeping system reported that Mr. Fine and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Fine and other aggrieved employees were entitled to a meal period penalty. Thus, Mr. Fine and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

Moreover, OAKLAND ZOO engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice

and/or policy, Mr. Fine and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that OAKLAND ZOO did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, OAKLAND ZOO did not pay other aggrieved employees at the correct rate of pay for premiums because OAKLAND ZOO systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, OAKLAND ZOO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Fine and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit 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, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, OAKLAND ZOO regularly failed to authorize and permit Mr. Fine and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, OAKLAND ZOO's policy and/or practice of understaffing its operations prevented Mr. Fine and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, OAKLAND ZOO failed to schedule rest periods, which, coupled with OAKLAND ZOO's failure to provide adequate rest period coverage, further led to Mr. Fine and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. Fine and other aggrieved employees were expected to respond to their company-issued cellular phones and/or radios at all times, including during rest periods. For example, OAKLAND ZOO's management interrupted Mr. Fine's rest periods three (3) times per week by contacting him on his company-issued cellular phone and/or radio to request that he supervise deliveries or respond to incidents.

OAKLAND ZOO also maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Fine and other aggrieved employees remain on-duty and on OAKLAND ZOO's premises during their rest periods. Because Mr. Fine and other aggrieved employees were required to continue working and restricted from leaving OAKLAND ZOO's premises during rest

periods, they were denied the ability to use their rest periods freely for their own purposes, such as to purchase food and beverages from a nearby convenience store. For instance, Mr. Fine was required to remain on-duty during his rest periods to monitor access points, supervise deliveries, and respond to alarms and other emergencies. Thus, OAKLAND ZOO effectively maintained control over Mr. Fine and other aggrieved employees during rest periods.

As a result of OAKLAND ZOO's practices and policies, Mr. Fine and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, in addition to having to remain on-duty during rest periods and having his rest periods interrupted, Mr. Fine was informed by OAKLAND ZOO's management that he and other employees were only entitled to two (2) rest periods per shift regardless of how many hours they worked, and as a result, Mr. Fine did not receive a third rest period when working shifts in excess of 10 hours.

OAKLAND ZOO also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Fine and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that OAKLAND ZOO did other aggrieved employees one (1) additional hour of premium pay for missed rest periods, OAKLAND ZOO did not pay other aggrieved employees at the correct rate of pay for premiums because OAKLAND ZOO failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, OAKLAND ZOO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Fine and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. OAKLAND ZOO has not provided Mr. Fine and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

During the relevant time period, OAKLAND ZOO has knowingly and intentionally provided Mr. Fine and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, OAKLAND ZOO issued uniform wage statements to Mr. Fine and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, OAKLAND ZOO violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because OAKLAND ZOO did not record the time Mr. Fine and other aggrieved employees spent working off-the-clock, improperly rounded their clock-in and clock-out times, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), OAKLAND ZOO did not list the correct amount of gross wages and net wages earned by Mr. Fine and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, OAKLAND ZOO failed to accurately list the total number of hours worked by Mr. Fine and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

In addition, because OAKLAND ZOO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, OAKLAND ZOO did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, OAKLAND ZOO also failed to list the correct amount of net wages in violation of section 226(a)(5). OAKLAND ZOO also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d), OAKLAND ZOO willfully failed to maintain accurate payroll records for Mr. Fine and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Fine's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, OAKLAND ZOO engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Fine and Other aggrieved employees, in violation of section 1198. Also, as stated, OAKLAND ZOO engaged in a company-wide practice and/or policy of falsifying Mr. Fine’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Fine and other aggrieved employees. Furthermore, in light of OAKLAND ZOO’s failure to provide Mr. Fine and other aggrieved employees with second 30-minute meal periods to which they were entitled, OAKLAND ZOO kept no records of meal start and end times for second meal periods.

Because OAKLAND ZOO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Fine and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Fine and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Fine and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee’s final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, OAKLAND ZOO had a company-wide policy and practice of failing to pay Mr. Fine and other aggrieved employees vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. For example, upon information and belief, OAKLAND ZOO failed to pay Mr. Fine the balance of his accrued and unused vacation wages, which was 87.93 hours at the time of his termination. OAKLAND ZOO’s failure to pay Mr. Fine and other aggrieved employees who are no longer employed by OAKLAND ZOO all vested vacation wages at the end of their employment caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

Mr. Fine and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, OAKLAND ZOO willfully failed to pay Mr. Fine and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Fine and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

OAKLAND ZOO willfully failed to pay Mr. Fine and other aggrieved employees who are no longer employed by OAKLAND ZOO all their earned wages, including, but not limited to, overtime wages, minimum wages, vested vacation wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving OAKLAND ZOO's employ.

Mr. Fine and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, OAKLAND ZOO sometimes scheduled Mr. Fine and other aggrieved employees to work eight (8) or more hours per day and more than six (6) consecutive days in a workweek. For example, OAKLAND ZOO required Mr. Fine to work seven (7) consecutive days on at least one occasion due to understaffing. Because Mr. Fine and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Fine and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, OAKLAND ZOO caused Mr. Fine and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Fine and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11100(4)(C) provides that, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." California Code of Regulations, Title 8, defines a split shift as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

OAKLAND ZOO willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(4)(C), because OAKLAND ZOO failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. OAKLAND ZOO sometimes scheduled other aggrieved employees to attend team meetings and then report to work for their scheduled shifts several hours after the meeting's conclusion. Accordingly, OAKLAND ZOO required other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage in violation of California Labor Code section 1198.

OAKLAND ZOO's failure to provide other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11100(4)(C). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating

expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 10-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, OAKLAND ZOO had a company-wide policy of requiring Mr. Fine and other aggrieved employees to utilize their own personal cellular phones to carry out their job duties, but failed to reimburse them for all of the costs of their work-related cellular phone expenses. Mr. Fine and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as responding to communications from OAKLAND ZOO’s management at all times. For example, as stated, Mr. Fine was required to answer calls from management once per month and spend 3-5 minutes discussing incidents that had occurred during his previous shift. In addition, OAKLAND ZOO required other aggrieved employees to download a mobile application on their personal cellular phones to utilize its timekeeping system. Although OAKLAND ZOO required Mr. Fine and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, OAKLAND ZOO failed to fully reimburse them for this cost.

Second, OAKLAND ZOO, on a company-wide basis, expected Mr. Fine and other aggrieved employees to report to work wearing clean uniforms emblazoned with OAKLAND ZOO’s company logo while simultaneously failing to provide employees with an adequate number of those uniforms. Because OAKLAND ZOO failed to provide Mr. Fine and other aggrieved employees with a sufficient number of uniforms in relation to their scheduled shifts, Mr. Fine and other aggrieved employees were forced to clean their uniforms frequently and incur expenses for doing so. For example, OAKLAND ZOO provided Mr. Fine with two (2) uniform shirts and pants, despite being scheduled to work five (5) or more days each week. As a result, Mr. Fine was required to wash his uniform shirts and pants several times each week.

Third, OAKLAND ZOO, on a company-wide basis, required Mr. Fine and other aggrieved employees to purchase safety equipment and personal protective equipment such as face masks, which they were required to wear while at work. For example, from approximately August 2020 until the end of his employment, Mr. Fine was forced to spend \$100.00 out-of-pocket on hand sanitizer and face masks to wear at work, because OAKLAND ZOO frequently ran out of hand sanitizer and disposable face masks. OAKLAND ZOO did not reimburse Mr. Fine and other aggrieved employees for the costs they incurred to purchase additional hand sanitizer and face masks.

OAKLAND ZOO could have provided Mr. Fine and other aggrieved employees with the actual tools for use on the job, such as company phones and safety equipment or, OAKLAND ZOO could have reimbursed employees for the costs of their cellular phone and safety equipment expenses. Instead, OAKLAND ZOO passed these operating costs off onto Mr. Fine and other aggrieved employees. At all relevant times, Mr. Fine did not earn at least two (2) times the minimum wage.

Thus, OAKLAND ZOO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Fine and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, OAKLAND ZOO, on a company-wide basis, failed to adequately provide Mr. Fine and other aggrieved employees with an adequate amount of safety equipment and personal protective equipment, such as hand sanitizer and face masks, to keep them safe in the workplace. For example, as stated, from approximately August 2020 until the end of his employment, Mr. Fine was forced to purchase his own face masks and hand sanitizer at the cost of approximately \$100 out-of-pocket, because OAKLAND ZOO did not adequately provide them to employees.

OAKLAND ZOO's failure to provide Mr. Fine and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Fine and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." OAKLAND ZOO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Fine's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Fine seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Fine, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against OAKLAND ZOO for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 551, 552, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Fine seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: CONSERVATION SOCIETY OF CALIFORNIA (via U.S. Certified Mail)

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE
§§ 2698, ET SEQ.**

Conservation Society of California
c/o BIRUK WELDHANA - Registered Agent
3179 Carleen Dr
Castro Valley CA 94546

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[] **BY PERSONAL SERVICE:** I caused DDS Legal to deliver the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Matthew Krout
Name

Signature