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8 Attorneys for Plaintiffs,

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI,
9 and DANIEL LOPEZ, and all others similarly situated

10 (Additional counsel on the following page)

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
13 **SAN DIEGO DIVISION**

14 JEFFREY PIPICH, EVE STORM,
15 GARY CULL, MELISSA
16 KOLAKOWSKI, and DANIEL
17 LOPEZ, on behalf of themselves and all
18 others similarly situated, and the general
19 public and as an “aggrieved employee”
20 on behalf of other similarly situated
21 “aggrieved employees” under the Labor
22 Code Private Attorney General Act of
23 2004,

24 *Plaintiffs,*

25 vs.

26 O'REILLY AUTO ENTERPRISES,
27 LLC, a Delaware limited liability
28 company; EXPRESS SERVICES, INC.,
a Colorado corporation doing business
as Express Employment Professionals;
and DOES 2–50, inclusive,

Case No.: 3:21-cv-01120-AHG

CLASS ACTION

**~~PROPOSED~~ FOURTH
AMENDED COMPLAINT FOR:**

1. Failure to Provide Meal Periods ;
2. Failure to Provide Rest Breaks;
3. Failure to Pay All Wages Earned
for All Hours Worked at the
Correct Rates of Pay;
4. Failure to Indemnify;
5. Wage Statement Penalties;
6. Waiting Time Penalties;
7. Unfair Competition (Bus. & Prof.
Code §§ 17200, et seq.; and
8. Civil Penalties (Lab Code §§2698,
et seq.)



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Defendants.

JURY TRIAL DEMANDED

ADDITIONAL ATTORNEY FOR PLAINTIFFS

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**Pro hac vice forthcoming.*



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1 Plaintiffs Jeffrey Pipich (“Plaintiff Pipich”), EVE STORM (“Plaintiff
 2 Storm”), Gary Cull (“Plaintiff Cull”), MELISSA KOLAKOWSKI (“Plaintiff
 3 Kolakowski”), and DANIEL LOPEZ (“Plaintiff Lopez”) (hereafter collectively
 4 “Plaintiffs”), on behalf of themselves and all others similarly situated, the State of
 5 California, and other aggrieved employees, complain and allege as follows:

6 **I. JURISDICTION AND VENUE**

7 1. Defendants allege this Court has original subject-matter jurisdiction
 8 over this action pursuant to 28 U.S.C. § 1332.

9 2. Plaintiffs bring this class action based on alleged violations of the
 10 California Labor Code and Industrial Welfare Commission Order No. 9-2001
 11 (hereafter “the Wage Order”), against Defendants O’REILLY AUTO
 12 ENTERPRISES, LLC (“O’Reilly”), a Delaware limited liability company,
 13 EXPRESS SERVICES, INC., a Colorado corporation, and DOES 1-50, inclusive
 14 (“Defendants”).

15 3. Plaintiffs are citizens of California.

16 4. For purposes of diversity, a limited liability company (LLC) is a citizen
 17 of “every state of which its owners / members are citizens.” *Johnson v. Columbia*
 18 *Properties Anchorage, LP*, 437 F.3d 894 (9th Cir. 2006). O’Reilly Auto Enterprises,
 19 LLC has only one owner / member which is Ozark Services, Inc.

20 5. A corporation is deemed to be a citizen of the states where it is
 21 incorporated and where its principal place of business is located. 28 U.S.C. §
 22 1332(c)(1); *Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1186 (2010). Ozark Services,
 23 Inc. is a corporation organized and existing under the laws of the State of Missouri,
 24 with its principal place of business located in Springfield, Missouri.

25 6. Where a statute authorizes an award of attorney fees, the fees are part
 26 of the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155–
 27 56 (9th Cir. 1998). Plaintiff’s individual damages, including attorneys’ fees exceed
 28



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1 \$75,000.

2 7. As set forth in more detail below, Plaintiffs allege that Defendants are
3 liable to them and other similarly situated workers for unpaid wages, statutory
4 penalties, interest, and related relief. These claims are based on Defendants' failures
5 to: (1) Provide all rest and meal periods; (2) Indemnify for necessary work-related
6 expenditures; (3) Pay all wages earned for all hours worked at the correct rates of
7 pay; and (4) Provide complete and accurate wage statements.

8 8. Venue is proper in the Southern District of California because O'Reilly
9 is subject to personal jurisdiction in this District.

10 9. O'Reilly is subject to personal jurisdiction before this Court because it
11 has purposefully availed itself of the privileges of conducting activities throughout
12 the State of California and established minimum contacts sufficient to confer
13 jurisdiction. O'Reilly transacts business in California, advertises in California, and
14 markets to California consumers. The violations of the law forming the basis of this
15 lawsuit occurred in California. Further, O'Reilly employs California residents.
16 Therefore, the assumption of jurisdiction over O'Reilly will not offend traditional
17 notions of fair play and substantial justice and is consistent with the constitutional
18 requirements of due process. O'Reilly also had and continues to have continuous
19 and systematic contacts with the State of California sufficient to establish general
20 jurisdiction over it.

21 **II. THE PARTIES AND INTRODUCTION**

22 10. Plaintiffs are residents of California.

23 11. Defendant EXPRESS SERVICES, INC., dba Express Employment
24 Professionals, is a corporation organized and existing under the laws of Colorado
25 and a citizen of California based on Plaintiff's information and belief.

26 12. Defendant O'REILLY AUTO ENTERPRISES, LLC is a limited
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1 liability company organized and existing under the laws of Delaware and a citizen
2 of California based on Plaintiffs' information and belief.

3 13. Plaintiffs are ignorant of the true names, capacities, relationships, and
4 extents of participation in the conduct alleged herein of the Defendants sued as
5 DOES 1-50, inclusive, but are informed and believe and thereon allege that said
6 Defendants are legally responsible for the wrongful conduct alleged herein and
7 therefore sue these Defendants by such fictitious names. Plaintiffs will amend the
8 Complaint to allege the true names and capacities of the DOE Defendants when
9 ascertained.

10 14. Plaintiffs are informed and believe and thereon allege that, at all
11 relevant times herein, all Defendants were the agents, employees and/or servants,
12 masters or employers of the remaining defendants, and in doing the things
13 hereinafter alleged, were acting or failing to act within the course and scope of such
14 agency, employment, direction and control, and with the approval and ratification
15 of each of the other Defendants.

16 15. At all relevant times, in perpetrating the acts and omissions alleged
17 herein, Defendants, and each of them, acted pursuant to and in furtherance of a
18 policy, practice, or a lack of a practice which resulted in Defendants not
19 compensating Plaintiffs and the other Class Members or otherwise complying with
20 their rights in accordance with applicable California labor laws as alleged herein.

21 16. At all relevant times, in perpetrating the acts and omissions alleged
22 herein, Defendants and each of them acted pursuant to and in furtherance of a policy
23 and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiffs
24 and other members of the below-described class in accordance with applicable laws
25 as alleged herein.

26 17. Defendants own and operate a line of automotive retailers that
27 specialize in providing aftermarket parts and accessories to both consumers and
28



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1 businesses. Defendants rely on a robust network of distribution centers strategically
 2 located across the United States to ensure timely product availability and optimal
 3 inventory levels throughout their stores. Defendants employ thousands of
 4 individuals at distribution centers throughout the state of California and the United
 5 States to support the flow of their automobile products into stores nationwide. The
 6 manual tasks that these employees perform include, without limitation, storing
 7 inventory, reviewing and selecting orders, pulling specific parts according to
 8 retailers' needs, packing orders, and loading and delivering orders.

9 18. This case is about Defendants' failure to provide proper payment of all
 10 wages, including regular and overtime and doubletime wages and to otherwise
 11 comply with state labor laws. These claims are based on Defendants' failures to: (1)
 12 Provide all rest and meal periods; (2) Indemnify for necessary work-related
 13 expenditures; (3) Pay all wages earned for all hours worked at the correct rates of
 14 pay; (4) Issue accurate and complete itemized wage statements; (5) Timely pay
 15 wages during and upon termination of employment and; (6) Provide toilet and
 16 storage facilities, lockers, change rooms, and acceptable work temperatures, (7)
 17 Maintain accurate employment records; (8) Comply with the Business and
 18 Professions Code; and (9) Comply with other Labor Code requirements that prohibit
 19 employee quotas in certain circumstances.
 20

21 19. The Judicial Council of California's amended Emergency Rule 9
 22 (effective May 29, 2020) provides that "[n]otwithstanding any other law, the
 23 statutes of limitations and repose for civil causes of action that exceed 180 days are
 24 tolled from April 6, 2020, until October 1, 2020." The Advisory Committee
 25 Comment notes that "Emergency rule 9 is intended to apply broadly to toll any
 26 statute of limitations on the filing of a pleading in court asserting a civil cause of
 27 action. The term 'civil causes of action' includes special proceedings. (See Code
 28 Civ. Proc., §§ 312, 363 ['action,' as used in title 2 of the code (Of the Time of



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Commencing Civil Actions), is construed ‘as including a special proceeding of a civil nature’) The rule also applies to statutes of limitations on filing causes of action in court found in codes other than the Code of Civil Procedure” Accordingly, the relevant time period of claims discussed herein is three years prior to the date Plaintiffs filed this action, plus the additional time during which the statute of limitations was tolled (pursuant to Emergency Rule 9 of the California Rules of Court) and ongoing.

III. CLASS ALLEGATIONS

20. This action has been brought and may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”). Class members are similarly situated persons and there are common questions of law and fact that predominate over any questions that solely affect individual class members. Class treatment is also superior to all other methods for fairly and efficiently adjudicating this controversy because it will allow a large number of similarly situated persons to both simultaneously and efficiently prosecute their common claims in a single forum without the needless duplication of effort and expense that numerous individual actions would entail. Further, Plaintiffs are not aware of any difficulties that are likely to be encountered in the management of this action that would preclude class treatment.

21. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California, either directly or indirectly through staffing agencies, as hourly, non-exempt employees, including, but not limited to, pickers, drivers, warehouse workers, material handlers, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, who worked at an O’Reilly distribution center any time during the period beginning July 5, 2018 and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).



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22. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

23. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiffs do not currently know the exact number of Class Members, Plaintiffs are informed and believe that the actual number exceeds the minimum required for numerosity under California laws.

24. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime, meal period premium, and rest period premium;

B. Whether Defendants failed to pay all wages earned at the correct rates of pay;

C. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

D. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

E. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

F. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

G. Whether Defendants willfully failed to provide the class with timely final wages;

H. Whether Defendants failed to maintain complete and accurate



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1 employee records, including payroll records;

2 I. Whether Defendants failed to provide the required facilities,
3 including a safe work environment;

4 J. Whether Defendants violated Labor Code section 2102 by
5 preventing Class Members from exercising their statutory rights to meal and rest
6 breaks, or complying with health and safety standards, through the imposition of
7 quotas;

8 K. Whether Defendants utilized quotas or monitoring systems that
9 considered time spent on rest or meal breaks, or actions taken to comply with
10 occupational health and safety laws as unproductive time in violation of Labor Code
11 section 2103;

12 L. Whether Defendants engaged in unfair competition within the
13 meaning of Business and Professions Code sections 17200, et seq., with respect to
14 the Class; and

15 M. Whether Class Members are entitled to restitution of money or
16 property that Defendants may have acquired from them through alleged Labor Code
17 violations.

18 25. **Typicality:** Plaintiffs' claims are typical of the other Class Members'
19 claims. Plaintiffs are informed and believe and thereon allege that Defendants have
20 a policy and/or practice, or lack thereof, which resulted in Defendants failing to
21 comply with the California Labor Code, the Wage Order, and the Business and
22 Professions Code.

23 26. **Adequacy of Class Representative:** Plaintiffs are adequate class
24 representatives in that they have no interests that are adverse to, or otherwise in
25 conflict with, the interests of absent Class Members. Plaintiffs are dedicated to
26 vigorously prosecuting this action on behalf of Class Members. Plaintiffs will fairly
27 and adequately represent and protect the interests of Class Members.
28



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27. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiffs or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiffs and absent Class Members.

28. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. FACTUAL ALLEGATIONS

29. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

30. Plaintiff Pipich worked for Defendants as a City Counter Route Driver and warehouse employee from approximately July 2015 to February 2021. Plaintiff Pipich worked for at Defendants' Distribution Center Number 25 in Moreno Valley, California. Plaintiff Pipich was a non-exempt employee and was compensated on an hourly basis.

31. Plaintiff Storm began working for Defendants on approximately October 19, 2020 at the O'Reilly Auto Parts Distribution Center Moreno Valley,



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1 Riverside County in the non-exempt, hourly position of picker. Defendants
2 continuously employed her in that capacity until on or about January 7, 2021 when
3 her employment ended.

4 32. On approximately December 4, 2018, Defendants began to employ
5 Plaintiff Cull at the O'Reilly Auto Parts Distribution Center Moreno Valley,
6 Riverside County in the non-exempt, hourly position of outbound material handler.
7 From that date, Defendants continuously employed him in that capacity until on or
8 about September 20, 2019 when his employment ended.

9 33. From approximately October 29, 2019 to January 27, 2022,
10 Defendants employed Plaintiff Kolakowski at the O'Reilly Auto Parts Distribution
11 Center Stockton, San Joaquin County in the non-exempt, hourly positions of
12 material handler and custodian.

13 34. From approximately June of 2017 to March of 2020 and from June
14 2022 to October of 2023, Defendants employed Plaintiff Lopez at the O'Reilly Auto
15 Parts Distribution Center Moreno Valley, Riverside County in the non-exempt,
16 hourly positions of material handler and maintenance specialist.

17 35. Defendants specialize in offering aftermarket automobile parts to
18 professional and amateur consumers at their stores. Defendants operationalize their
19 value proposition of offering excellent customer service to consumers in part
20 through the support of a strategic network of distribution centers that channel
21 inventory into Defendants' stores. Indeed, Defendants' business model is designed
22 so that timely product availability and optimal inventory levels are achieved via this
23 network of distribution centers, which provide five-nights-a-week delivery to
24 substantially all stores.

25 36. At all relevant times, Defendants issued wages to Plaintiffs and all of
26 the other Class Members on a weekly and/or bi-weekly basis and paid them by the
27 hour. At all relevant times, Defendants classified Plaintiffs and all of the other Class
28



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1 Members as non-exempt employees entitled to the protections of the Labor Code
2 and the Wage Order.

3 37. As hourly, non-exempt employees, Plaintiffs were required to clock-
4 in and clock-out at one of Defendants' timekeeping stations located inside the
5 distribution center. However, prior to clocking in each day, Defendants subjected
6 Plaintiffs to a health screening for Covid-19, a metal detector screening, and a
7 security inspection. After clocking out each day, Defendants subjected Plaintiffs to
8 an additional metal detector screening and security inspection.

9 38. Defendants implemented the Covid-19 screening in 2020 following
10 the outbreak of the Coronavirus.

11 39. Defendants imposed the Covid-19 screening as a requirement for work
12 each shift. The examination was conducted on Defendants' premises, was required
13 by Defendants, and was necessary for each employee to perform their work for
14 Defendants.

15 40. Defendants failed to compensate Plaintiffs and all of the other Class
16 Members for all hours worked at the applicable minimum or regular rates of pay.
17 Defendants required Plaintiffs and Class Members to perform several tasks before
18 they could clock in for payroll purposes. Defendants required Plaintiffs and Class
19 Members to scan their work badges to enter the parking lot. This process often took
20 several minutes when several people were scheduled for the same shift and/or when
21 the gate scanner malfunctioned and did not open after an employee scanned his or
22 her badge. On such occasions, the employees had to wait several minutes for
23 another employee to open the gate before they could enter the parking lot.

24 41. For a period of time, Defendants also required Plaintiffs and the Class
25 Members to spend time in COVID19 screening procedures before entering their
26 work areas. Plaintiffs and Class Members were subject to a Covid-19 screening at
27 a designated area in the employee parking lot and, later, in the employee lounge
28



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1 area, both which anteceded access to the main distribution center area where
 2 employees conduct their work and where timekeeping stations were located. The
 3 screening process involved a security guard or another employee of Defendants
 4 asking a series of questions related to the employee's potential exposure to the virus
 5 and present health symptoms. The screening process also entailed taking the
 6 employee's temperature. If the employee passed the examination, s/he was allowed
 7 to continue to the next screening, namely the security inspection, before s/he could
 8 officially clock in and commence getting paid for their work.

9 42. The amount of time that it took to undergo the Covid-19 screening
 10 ranged between two to five minutes on average. However, the total time spent in
 11 the screening process often exceeded five minutes due to the number of employees
 12 waiting in line to undergo the screening.

13 43. This Covid-19 daily screening should have been paid by Defendants
 14 because Plaintiffs and the Class Members were subject to Defendants' control, had
 15 no option of opting out of the health screening, and were threatened with
 16 disciplinary action if they failed to comply with the screening. Plaintiffs and the
 17 Class Members, specifically, were compelled to remain on Defendants' premises
 18 during the duration of the screening and perform a series of tasks as instructed by
 19 Defendants, namely answering questions related to their health and submitting to
 20 their temperatures being taken. Defendants' control and restraint prevented
 21 Plaintiffs and the Class Members from using this time for their own purposes.

22 44. Plaintiffs and the Class Members nonetheless completed this work
 23 while off the clock and without time added to their pay to compensate for the Covid-
 24 19 screening.

25 45. Defendants further required Plaintiffs and the Class Members to spend
 26 time in security check procedures before entering their work areas and before they
 27 could clock in for purposes of payroll.
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1 46. The security inspection prior to each shift, like the Covid-19 screening,
2 was imposed by Defendants as a requirement for work. The inspection was
3 conducted on Defendants' premises, was required by Defendants, and entailed
4 significant control over employees' time.

5 47. Plaintiffs and the Class Members underwent the security screening in
6 tandem with and after undergoing the Covid-19 screening, but prior to clocking in
7 for work, at the start of each workday. Indeed, the security screening took place
8 inside the employee lounge, which was outside the main distribution center area
9 where employees accessed timekeeping stations to clock in.

10 48. The security screening was overseen by a security guard. On a typical
11 morning, Plaintiffs and the Class Members would walk up to the security station,
12 empty their pockets, remove any metals, open any bags, walk through the metal
13 detector, collect all belongings, walk across the remaining twenty-five feet of the
14 security area, enter the main distribution center area, and only then would they clock
15 in. The clock-in station was located about ten to fifteen feet from the door.

16 49. The amount of time that it took to undergo the pre-shift security
17 inspection ranged between three to five minutes on average. However, this time
18 often exceeded five minutes depending on the number of employees waiting in line
19 to undergo the screening.

20 50. After passing through security checks, Plaintiffs and Class Members
21 had to stand in lines for several minutes before they could clock in for payroll
22 purposes. Defendants did not allow Plaintiffs and Class Members to clock in more
23 than three (3) minutes before their scheduled start time. Defendants disciplined the
24 Class Members if they clocked in even one minute past their scheduled start time
25 and if they were not present on-time with all their equipment, such as RF guns and
26 headsets, at their works stations for staff meetings and stretches at the start of their
27 shifts. As such, to avoid disciplinary actions, including and up to termination,
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1 Plaintiffs and Class Members had no choice but to arrive minutes before their
 2 scheduled start time to allow themselves enough time to go through the COVID19
 3 and security check process and clock-in, pick up and sign up for their equipment,
 4 and be present at their work stations at the start of their shifts for daily meetings and
 5 stretches. Defendants did not pay Plaintiffs and the Class Members for these off-
 6 the-clock activities. Defendants also required Plaintiffs and the Class Members to
 7 spend time in security check procedures during their off-the-clock meal periods.
 8 Defendants did not pay Plaintiffs and the Class Members for time spent in these
 9 meal time activities nor pay for the entirety of the interrupted 30-minute meal period
 10 as time worked.

11 51. Moreover, Plaintiffs and the Class Members were subject to the same
 12 security inspection upon clocking out for the day and before leaving Defendants'
 13 premises.

14 52. The amount of time that it took to undergo the post-shift security
 15 inspection was slightly longer and ranged between three to ten minutes on average.
 16 However, this time often exceeded ten minutes depending on the number of
 17 employees waiting in line to undergo the screening. Plaintiffs and the Class
 18 Members noticed that lengthier lines occurred most frequently post-shift when
 19 larger groups of employees ended their shift around the same time.

20 53. The daily pre-shift and post-shift off-the-clock security inspections
 21 should have been paid by Defendants because Plaintiffs and the Class Members
 22 were subject to Defendants' control, could not opt out of the security inspections,
 23 and were threatened with disciplinary action if they failed to comply with the
 24 security inspections. Plaintiffs and the Class Members, specifically, were compelled
 25 to remain on Defendants' premises during the duration of the inspection and
 26 perform a series of tasks as instructed by Defendants, namely opening bags,
 27 removing any metals, walking through the metal detector, and collecting all
 28



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1 belongings. Defendants' control and restraint prevented Plaintiffs and the Class
 2 Members from using this time for their own purposes. For instance, Plaintiffs and
 3 the Class Members could not use their cell phones or consume any food given that
 4 these items were prohibited from entering the distribution center.

5 54. The primary job duties of Plaintiffs and the Class Members do not fall
 6 under any exemptions to the California Labor Code.

7 55. Defendants failed to compensate Plaintiffs and all of the other Class
 8 Members at the correct rates of pay for all hours worked over eight (8) in a day,
 9 over forty (40) in a week, and for the first eight (8) hours of the seventh day of the
 10 workweek. The unpaid activities described above extended the workdays of
 11 Plaintiffs and the Class Members in excess of eight hours in a day and in excess of
 12 forty (40) hours in a week. However, Defendants did not compensate Plaintiffs and
 13 the Class Members at overtime premium rates of pay for all overtime hours worked.

14 56. Defendants failed to compensate Plaintiffs and all of the other Class
 15 Members at the correct rates of pay for all hours worked over twelve (12) in a day,
 16 and all over the first eight (8) of the seventh day of the workweek. The unpaid
 17 activities described above extended the workdays of Plaintiffs and the Class
 18 Members in excess of twelve (12) hours in a day. However, Defendants did not
 19 compensate Plaintiffs and the Class Members at doubletime premium rates of pay
 20 for such work.

21 57. Moreover, Defendants did not pay Class Members all their overtime
 22 and doubletime wages, and the overtime that was paid, as well as PTO, to the extent
 23 there was any, at the correct rates of pay as Defendants incorrectly calculated the
 24 regular rate of pay for overtime and doubletime by failing to include all forms of
 25 pay, including, but not limited to non-discretionary bonuses and commissions, wage
 26 premiums or shift differential pay, when calculating their regular rates of pay for
 27 purposes of overtime and doubletime wages.
 28



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58. At all relevant times, Defendants failed to provide Plaintiffs and all of the other Class Members with all timely 30-minute, off-duty meal periods. As explained above, Defendants required Plaintiffs and the Class Members to spend time in security check procedures and during their off-the-clock meal periods. Defendants prohibited Plaintiffs and the Class Members from taking their personal items such as food brought from home, mobile phones, and other electronic devices into their work areas. To enjoy the use of such personal items during their meal periods or rest breaks, Defendants required Plaintiffs and the Class Members to undergo the security check procedures during their off-the-clock meal periods. Defendants did not pay Plaintiffs and the Class Members for time spent in these meal time activities nor pay for the entirety of the interrupted 30-minute meal period as time worked. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiffs and all of the other Class Members with meal periods as required by law.

59. At all relevant times, Defendants failed to authorize and permit Plaintiffs and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. As explained above, Defendants also required Plaintiffs and the Class Members to spend time in security check procedures during their off-duty rest breaks. To enjoy the use of personal items such as food brought from home, mobile phones, and other electronic devices, Defendants required Plaintiffs and the Class Members to undergo the security check procedures during their off-duty rest breaks. Defendants did not pay Plaintiffs and the Class Members for time spent in these rest break time activities. Defendants also failed to pay premium wages for days on which they failed to authorize and permit Plaintiffs and all of the other Class Members to take rest breaks as required by law

60. Defendants further had strict time efficiency requirements for Plaintiffs and the Class Members. Defendants used productivity scanners and



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1 certain software to monitor Plaintiffs and the Class Members' productivity which
 2 monitored Plaintiffs and the Class Members at all times. Defendants' productivity
 3 requirements prevented and discouraged Plaintiffs and the Class Members from
 4 taking restroom breaks and full rest and meal periods according to California laws.
 5 Defendants categorized the time Plaintiffs and the Class Members spent on breaks
 6 including reasonable travel time to and from the restrooms as unproductive in their
 7 monitoring system which was a violation of Labor Code §§ 2102 and 2103.

8 61. At all relevant times, Defendants required Plaintiffs and all of the other
 9 Class Members to incur certain business expenses in the course of performing their
 10 duties. Defendants required Plaintiffs and all of the other Class Members to supply
 11 latex gloves, masks, cleaning products, work gloves, steel toed work boots, and
 12 other protective gear such as work boots to perform their job duties. Defendants
 13 also required Plaintiffs and all of the other Class Members to use their personal
 14 cellphones for work purposes. However, Defendants did not provide these items
 15 and did not reimburse Plaintiffs and the other Class Members for these items.

16 62. Further, the wage statements Defendants provided to Plaintiffs and the
 17 Class Members failed to state the correct total number of hours worked during each
 18 pay period when they were paid different rates of pay for the same number of hours
 19 worked. The wage statements Defendants issued to Plaintiffs and the Class
 20 Members also failed to indicate the amount of paid sick leave or the amount of paid
 21 time off available to be used in lieu of sick leave.

22 63. At all relevant times during the applicable limitations period,
 23 Defendants failed to provide sufficient toilet facilities for use by Plaintiffs and the
 24 Class Members within reasonable access. Defendants also failed to provide
 25 sufficient lockers, closets, storage facilities, and changing rooms for use by
 26 Plaintiffs and the Class Members. Moreover, Defendants failed to provide
 27 acceptable temperatures for the work areas they expected Plaintiffs and the Class
 28



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1 Members to perform their job duties in resulting in unsafe and unhealthy working
2 conditions.

3 64. For the reasons stated herein, Plaintiffs allege that as a result of
4 Defendants' unlawful practice and policies, Plaintiffs and the Class Members were:

- 5 A. Not provided with all off duty meal periods;
- 6 B. Not provided with all rest break periods as required by law;
- 7 C. Not paid one hour's pay for each workday in which Defendants
8 failed to provide them with one or more timely rest periods;
- 9 D. Not paid one hour's pay for each workday in which Defendants
10 failed to provide them with one or more timely meal periods;
- 11 E. Not paid all wages earned, including, but not limited to, regular
12 and overtime wages at the correct rates of pay including the work performed while
13 clocked out;
- 14 F. Not indemnified for all necessary business expenditures
15 incurred during the discharge of their duties;
- 16 G. Not provided with complete and correct itemized wage
17 statements;
- 18 H. Not paid all earned and unpaid wages during their employment
19 and when their employment ended;
- 20 I. Not provided with sufficient toilet and storage facilities, change
21 rooms, and acceptable work temperatures; and
- 22 J. subject to unlawful quotas in violation of the Labor code.
- 23
- 24
- 25 ///
- 26 ///
- 27 ///
- 28



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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7, 512, 1198

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

65. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

66. At all relevant times, Plaintiffs and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

67. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

68. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.



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69. In relevant part, Section 10 of the Wage Order states:

Meal Periods

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.



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1 70. In relevant part, California Labor Code § 226.7 states:

2 (b) An employer shall not require an employee to
3 work during a meal or rest period mandated pursuant to
4 an applicable statute, or applicable regulation, standard,
5 or order of the Industrial Welfare Commission, the
6 Occupational Safety and Health Standards Board, or the
7 Division of Occupational Safety and Health.

8 (c) If an employer fails to provide an employee a meal
9 period or rest period in accordance with a state law,
10 including, but not limited to, an applicable statute or
11 applicable regulation, standard, or order of the Industrial
12 Welfare Commission, the Occupational Safety and
13 Health Standards Board, or the Division of Occupational
14 Safety and Health, the employer shall pay the employee
one additional hour of pay at the employee's regular rate
of compensation for each work day that the meal or rest
period is not provided.

15 71. Pursuant to California Labor Code § 512 and the Wage Order,
16 Plaintiffs and the Class Members were entitled to uninterrupted meal periods of at
17 least 30 minutes for each day they worked five or more hours. Pursuant to
18 California Labor Code § 512 and the Wage Order, they were also entitled to a
19 second 30-minute meal period when they worked more than 10 hours in a workday.

20 72. As discussed above, Defendants intentionally failed to provide
21 Plaintiffs and the Class Members with all required 30-minute duty free meal
22 periods.

23 73. Plaintiffs are informed and believe and thereon allege that, at all
24 relevant times within the applicable limitations period, Defendants had a policy,
25 practice, or a lack of a policy which resulted in Defendants not providing Plaintiffs
26 and the Class Members with all off-duty meal periods and rest breaks required by
27 California law. Class Members also suffered late, short, interrupted, and/or missed
28



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1 first and second meal periods, and on occasion, the job demands were such that
2 they were prevented from having meal periods altogether.

3 74. Plaintiffs are informed and believe and thereon allege that, at all
4 relevant times within the applicable limitations period, Defendants had a policy,
5 practice, or a lack of a policy which resulted in Defendants not providing the Class
6 Members with all off-duty meal periods required by California law.

7 75. As a result of Defendants' unlawful conduct, Plaintiffs and the Class
8 Members have suffered damages in amounts subject to proof to the extent they
9 were not paid additional wages owed for all meal periods not provided to them.

10 76. By reason of the above, Plaintiffs and the Class Members are entitled
11 to premium wages for workdays in which one or more meal periods were not
12 provided to them pursuant to California Labor Code § 226.7.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

15 **Lab. Code § 226.7 and 1198**

16 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

17 77. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged
18 herein.

19 78. At all relevant times during the applicable limitations period, Plaintiffs
20 and the Class Members have been employees of Defendants and entitled to the
21 benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage
22 Order.

23 79. In relevant part, California Labor Code § 1198 states:

24 The maximum hours of work and the standard conditions
25 of labor fixed by the commission shall be the maximum
26 hours of work and the standard conditions of labor for
27 employees. The employment of any employee for longer
28 hours than those fixed by the order or under conditions



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of labor prohibited by the order is unlawful.

80. In relevant part, Section 11 of the Wage Order states:

Rest Periods

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

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

81. Pursuant to the Wage Order, Plaintiffs and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

82. Defendants intentionally failed to authorize and permit Plaintiffs and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

83. As explained above, at all relevant times, Defendants failed to authorize and permit Plaintiffs and all of the other Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Class Members also experienced short, untimely, and interrupted rest



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1 periods, and on occasion, the job demands were such that they were prevented from
 2 having rest periods altogether. Defendants did not seek an exemption from the rest
 3 period protections of the Wage Order from the California Division of Labor
 4 Standards Enforcement.

5 84. Plaintiffs are informed and believe and thereon allege that, at all
 6 relevant times within the applicable limitations period, Defendants had a policy,
 7 practice, or a lack of a policy which resulted in Defendants not authorizing and
 8 permitting Plaintiffs and the Class Members to take all rest breaks required by
 9 California law.

10 85. Defendants failed to provide Plaintiffs with all required rest breaks in
 11 accordance with the Wage Order. Plaintiffs are informed and believe and thereon
 12 allege that, at relevant times within the applicable limitations period, Defendants
 13 had a policy, practice, or a lack of a policy which resulted in Defendants not
 14 providing the Class Members with all rest breaks required by California law.

15 86. Defendants failed to pay Plaintiffs the additional wages required by
 16 California Labor Code § 226.7 for all rest breaks not provided to them. Plaintiffs
 17 are informed and believe and thereon allege that, at relevant times within the
 18 applicable limitations period, Defendants have maintained a policy, practice, or a
 19 lack of a policy which resulted in Defendants not providing the Class Members with
 20 additional wages for all rest breaks not provided to them as required by California
 21 Labor Code § 226.7.

22 87. As a result of Defendants' unlawful conduct, Plaintiffs and the Class
 23 Members have suffered damages in amounts subject to proof to the extent they were
 24 not paid additional wages owed for all rest breaks not provided to them.

25 88. By reason of the above, Plaintiffs and the Class Members are entitled
 26 to premium wages for workdays in which one or more rest breaks were not provided
 27 to them pursuant to California Labor Code § 226.7.
 28



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THIRD CAUSE OF ACTION
FAILURE TO PAY ALL WAGES EARNED AT THE CORRECT RATES
OF PAY

Lab. Code §§ 223, 510, 1194, 1197, and 1198

(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)

89. Plaintiffs incorporate all paragraphs of this complaint as if fully alleged herein.

90. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code and the Wage Order.

91. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

92. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including



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1 12 hours in any workday, and for the first eight (8) hours worked on
2 the seventh (7th) consecutive day of work in a workweek.

3 (b) Double the employee's regular rate of pay for all hours worked in
4 excess of 12 hours in any workday and for all hours worked in excess
5 of eight (8) hours on the seventh (7th) consecutive day of work in a
6 workweek.

7 (c) The overtime rate of compensation required to be paid to a
8 nonexempt full-time salaried employee shall be computed by using
9 the employee's regular hourly salary as one-fortieth (1/40) of the
10 employee's weekly salary.

11 93. Section 4 of the Wage Order requires an employer to pay non-exempt
12 employees at least the minimum wage set forth therein for all hours worked, which
13 consists of all hours that an employer has actual or constructive knowledge that
14 employees are working.

15 94. Labor Code section 510 states:

16 Eight hours of labor constitutes a day's work. Any work in excess of
17 eight hours in one workday and any work in excess of 40 hours in any
18 one workweek and the first eight hours worked on the seventh day of
19 work in any one workweek shall be compensated at the rate of no less
20 than one and one-half times the regular rate of pay for an employee.
21 Any work in excess of 12 hours in one day shall be compensated at
22 the rate of no less than twice the regular rate of pay for an employee.
23 In addition, any work in excess of eight hours on any seventh day of
24 a workweek shall be compensated at the rate of no less than twice the
25 regular rate of pay of an employee. Nothing in this section requires an
26 employer to combine more than one rate of overtime compensation in
27 order to calculate the amount to be paid to an employee for any hour
28 of overtime work.

95. Labor Code section 1194 invalidates any agreement between an
employer and an employee to work for less than the minimum wage required under
the applicable Wage Order.

96. Labor Code § 1194.2 authorizes employees to recover liquidated



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1 damages for violations of Labor Code § 1194.2, where an employee is not paid for
 2 all hours worked, they may recover minimum wages and liquidated damages. (See
 3 *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp.3d 891.)

4 97. Labor Code section 1197 makes it unlawful for an employer to pay an
 5 employee less than the minimum wage required under the applicable Wage Order
 6 for all hours worked during a payroll period.

7 98. Labor Code section 1198 makes it unlawful for an employer to employ
 8 an employee under conditions that violate the Wage Order.

9 99. Labor Code § 223 makes it unlawful for employers to pay their
 10 employees wages lower than required by contract or statute while purporting to pay
 11 them legal wages. Section 2 of the Wage Order defines “hours worked” as “the
 12 time during which an employee is subject to the control of an employer, and
 13 includes all the time the employee is suffered or permitted to work, whether or not
 14 required to do so.”

15 100. In conjunction, these provisions of the Labor Code require employers
 16 to pay non-exempt employees no less than their agreed-upon or statutorily
 17 mandated wage rates for all hours worked, including unrecorded hours when the
 18 employer knew or reasonably should have known that employees were working
 19 during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575,
 20 585.)

21 101. As discussed above, at all relevant times during the applicable
 22 limitations period, Defendants required Plaintiffs and the Class Members to work
 23 off-the-clock without compensation. Further, the unpaid activities explained above
 24 extended the workdays of Plaintiffs and the Class Members in excess of eight hours
 25 in a day and in excess of 40 hours in a week. However, Defendants did not
 26 compensate Plaintiffs and the Class Members at overtime premium rates of pay for
 27 all overtime hours worked. The unpaid activities explained above also extended the
 28



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1 workdays of Plaintiffs and the Class Members in excess of 12 hours in a day.
 2 However, Defendants did not compensate Plaintiffs and the Class Members at
 3 doubletime premium rates of pay for all doubletime hours worked.

4 102. Plaintiffs are informed and believe and thereon allege that, at all
 5 relevant times, Defendants maintained a policy and/or practice, or lack thereof,
 6 which resulted in Defendants' failure to compensate Plaintiffs and the other Class
 7 Members for all hours worked as required by California law.

8 103. As a result of Defendants' unlawful conduct, Plaintiffs and the other
 9 Class Members have suffered damages in an amount, subject to proof, to the extent
 10 they were not paid the full amount of wages earned during each pay period during
 11 the applicable limitations period.

12 104. Pursuant to Labor Code section 1194, Plaintiffs, on behalf of
 13 themselves and Class Members, seek to recover unpaid wages, liquidated damages
 14 in amounts equal to the amounts of unpaid wages, interest thereon, and awards of
 15 reasonable costs and attorneys' fees, all in amounts subject to proof.

16 105. Additionally, with respect to this cause of action, on behalf of
 17 themselves and the class, Plaintiffs pray for an award of reasonable costs and
 18 attorneys' fees, including interest thereon, as permitted by law, all in amounts
 19 subject to proof.
 20

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO INDEMNIFY**

23 **Lab. Code § 1198 and 2802**

24 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

25 106. Plaintiffs incorporates all paragraphs of this complaint as if fully
 26 alleged herein.

27 107. At all relevant times during the applicable limitations period, Plaintiffs
 28 and the Class Members have been employees of Defendants and entitled to the



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1 benefits and protections of California Labor Code and the Wage Order.

2 108. In pertinent part, California Labor Code § 2802(a) states: “An
3 employer shall indemnify his or her employee[s] for all necessary expenditures
4 incurred by the employee in direct consequence of the discharge of his or her
5 duties.”

6 109. California Labor Code § 1198 prohibits employers from employing
7 their employees under conditions prohibited by the Wage Order.

8 110. At all relevant times, Defendants required Plaintiffs and the Class
9 Members to incur certain business expenses in the course of performing their
10 duties. During the applicable limitations period, Defendants required Plaintiffs and
11 all of the other Class Members to supply latex gloves, masks, cleaning products,
12 work gloves, steel toed work boots, and other protective gear to perform their job
13 duties. Defendants also required Plaintiffs and all of the other Class Members to
14 use their personal cellphones for work purposes. However, Defendants did not
15 provide these items and did not reimburse Plaintiffs and the other Class Members
16 for these items.

17 111. Plaintiffs are informed and believe and thereon allege that, at all
18 relevant times, Defendants maintained a policy and/or practice, or lack thereof,
19 which resulted in Defendants’ failure to indemnify Plaintiffs and the Class
20 Members for the reasonable expenses they incurred during the course of
21 performing their duties.
22

23 112. By reason of the above, Plaintiffs and the members of the class are
24 entitled to reimbursement for all necessary expenditures and losses and interest due
25 and owing to them within four years (4) of the date of the filing of the Complaint
26 until the date of entry of judgment pursuant to California Labor Code section
27 2802(b). Further, Plaintiffs, on behalf of themselves and the class, pray for
28 reasonable attorney’s fees pursuant to Labor Code section 2802(c).



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1 113. Additionally, with respect to this cause of action, on behalf of
 2 themselves and the class, Plaintiffs pray for an award of reasonable attorney fees
 3 and costs, including interest thereon, as permitted by law, all in amounts subject to
 4 proof.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE**

7 **STATEMENTS**

8 **Lab. Code § 226**

9 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

10 114. Plaintiffs incorporate all paragraphs of this Complaint as if fully
 11 alleged herein.

12 115. Pursuant to California Labor Code § 226(a), Plaintiff Lopez and the
 13 Class Members were entitled to receive, semi-monthly or at the time of each
 14 payment of wages, an accurate itemized statement showing:

15 A. Gross wages earned;

16 B. Total hours worked by the employee, except for any employee
 17 whose compensation is solely based on a salary and who is exempt from payment
 18 of overtime under subdivision (a) of Section 515 or any applicable order of the
 19 Industrial Welfare Commission;

20 C. The number of piece rate units earned and any applicable piece
 21 rate if the employee is paid on a piece-rate basis;

22 D. All deductions, provided that all deductions made on written
 23 orders of the Employee may be aggregated and shown as one item;

24 E. Net wages earned;

25 F. The inclusive dates of the period for which the employee is paid;

26 G. The name of the employee and his or her social security number,
 27 except that by January 1, 2008, only the last four digits of his or her social security
 28



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1 number or an employee identification number other than a social security number
2 may be shown on the itemized statement;

3 H. The name and address of the legal entity that is the employer;
4 and

5 I. All applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by the employee.

7 116. Pursuant to California Labor Code § 226, an employee is deemed to
8 suffer injury if the employer fails to provide a wage statement. Also, an employee
9 is deemed to suffer injury if the employer fails to provide accurate and complete
10 information as required by California Labor Code § 226(a) and the employee cannot
11 “promptly and easily determine” from the wage statement alone one or more of the
12 following:

13 A. The amount of the gross wages or net wages paid to the
14 employee during the pay period or any of the other information required to be
15 provided on the itemized wage statement pursuant to California Labor Code
16 § 226(a);

17 B. Which deductions the employer made from gross wages to
18 determine the net wages paid to the employee during the pay period;

19 C. The name and address of the employer and, if the employer is a
20 farm labor contractor, as defined in subdivision (b) of Section 1682 of the California
21 Labor Code, the name and address of the legal entity that secured the services of
22 the employer during the pay period;

23 D. The name of the employee and only the last four digits of his or
24 her social security number or an employee identification number other than a social
25 security number; and

26 E. The number of piece-rate units earned and the piece rate.

27 117. “Promptly and easily determine,” as stated in California Labor Code
28



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1 § 226(e), means a reasonable person would be able to readily ascertain the
2 information without reference to other documents or information.

3 118. As alleged herein, at all relevant times during the applicable limitations
4 period, Defendants violated California Labor Code section 226 because they did not
5 properly and accurately itemize each employee's gross wages earned, net wages
6 earned, the total hours worked, the corresponding number of hours worked at each
7 rate by the employee and other requirements of California Labor Code section 226.
8 Defendants failed to state in the wage statements they issued to Plaintiffs and the
9 other Class Members all their hours worked and wages earned, including, but not
10 limited to, regular and overtime wages for work they performed off-the-clock after
11 clocking-out (as described above). Defendants knowingly and intentionally did not
12 issue wage statements to Plaintiffs and the Class Members that state all minimum
13 wages earned, all regular wages earned, all overtime wages earned, all doubletime
14 wages earned, all meal period premium wages earned, all rest break premium wages
15 earned, and related information.

16 119. In addition, Defendants failed to provide accurate wage statements to
17 Class Members who are paid a shift differential. Those employees wage statements
18 do not state the correct amount of gross wages earned or the correct amount of net
19 wages earned for acknowledged meal period violations because Defendants pay
20 those employees premium wages for meal period violations at their base hourly rate
21 of pay and not their regular rate of pay because the shift differential is higher than
22 their base hourly rate of pay.

23 120. Moreover, Defendants wage statements are inaccurate and in violation
24 of Labor Code § 246 because their wage statements do not indicate the amount of
25 paid sick leave available or the amount of paid time off available to be used in lieu
26 of sick leave. Further, the wage statements provided to Plaintiff and the Class
27 Members failed to state the correct total amount of hours worked during the pay
28



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1 period because the total amount of hours worked in the pay period indicated on the
 2 pay stubs was the sum of hours attributed to all types of wage payments even when
 3 the Class Members were paid different types of wages for the same number of hours
 4 worked.

5 121. Plaintiffs and the Class Members are informed and believed and based
 6 thereon allege that Defendants had a policy or practice of failing to pay employees
 7 wages owed for: unacknowledged meal period violations; premium wages for rest
 8 period violations; minimum or overtime wages for compensable meal period time;
 9 and minimum or overtime wages owed for time spent going through security checks
 10 and going to the locker room to return or retrieve equipment before clocking in for
 11 work or after clocking out for work. As a result, Defendants had a policy or practice
 12 of providing employees wage statements in violation of Labor Code § 226(a).

13 122. Defendants' failure to provide Plaintiffs and the other Class Members
 14 with accurate wage statements was knowing and intentional. Defendants had the
 15 ability to provide Plaintiffs and the other Class Members with accurate wage
 16 statements but intentionally provided wage statements that Defendants knew were
 17 not accurate.

18 123. As a result of being provided with inaccurate wage statements by
 19 Defendants, Plaintiffs and the other Class Members have suffered injury. Their legal
 20 rights to receive accurate wage statements were violated and they were misled about
 21 the amount of wages they had actually earned and were owed. In addition, the
 22 absence of accurate information on their wage statements prevented immediate
 23 challenges to Defendants' unlawful pay practices, has required discovery and
 24 mathematical computations to determine the amounts of wages owed, has caused
 25 difficulty and expense in attempting to reconstruct time and pay records and/or has
 26 led to the submission of inaccurate information about wages to state and federal
 27 government agencies. Further, Plaintiffs and the other Class Members were not able
 28



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1 to ascertain from the wage statements whether Defendants complied with their
2 obligations under California Labor Code section 226(a).

3 **SIXTH CAUSE OF ACTION**

4 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

5 **(Lab. Code §§ 201, 202, and 203)**

6 **(By Plaintiffs, on behalf of herself and the Class, against all Defendants)**

7 124. Plaintiffs incorporate all paragraphs of this Complaint as if fully
8 alleged herein.

9 125. At all relevant times during the applicable limitations period, Plaintiffs
10 and the Class have been non-exempt employees of Defendants and entitled to the
11 benefits and protections of California Labor Code §§ 201, 201.3, 202, 203, and the
12 Wage Order.

13 126. Labor Code § 201 provides that all earned and unpaid wages of an
14 employee who is discharged are due and payable immediately at the time of
15 discharge.

16 127. Labor Code § 202 provides that all earned and unpaid wages of an
17 employee who quits after providing at least 72-hours notice before quitting are due
18 and payable at the time of quitting and that all earned and unpaid wages of an
19 employee who quits without providing at least 72-hours notice before quitting are
20 due and payable within 72 hours.

21 128. Labor Code § 227.3 provides that if an employer provides PTO, that
22 employer must then pay out at termination that portion of an employee's paid time
23 off that is vested but unused.

24 129. By failing to pay earned minimum, overtime, and premium wages to
25 Plaintiffs and the Class Members, Defendants failed to timely pay them all earned
26 and unpaid wages in violation of Labor Code § 201 or § 202.

27 130. Plaintiffs are informed and believes that Defendants' failures to timely
28



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1 pay Plaintiffs and the Class Members all of their earned and unpaid wages
 2 (described above) have been willful in that, at all relevant times, Defendants have
 3 deliberately maintained policies and practices that violate the requirements of the
 4 Labor Code and the Wage Order, even though at all relevant times, they have had
 5 the ability to comply with those legal requirements.

6 131. Pursuant to Labor Code § 203, Plaintiffs seek waiting time penalties
 7 on behalf of themselves and the Class, in amounts subject to proof not to exceed 30
 8 days of waiting time penalties for each Class Member.

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

12 **(By Plaintiffs, on behalf of themselves and the Class, against all Defendants)**

13 132. Plaintiffs incorporates all paragraphs of this Complaint as if fully
 14 alleged herein.

15 133. At all relevant times during the applicable limitations period, Plaintiffs
 16 and the class have been employees of Defendants and entitled to the benefits and
 17 protections of the Business and Professions Code §§ 17200, *et seq.*

18 134. The unlawful conduct of Defendants alleged herein amount to and
 19 constitutes unfair competition within the meaning of California Business &
 20 Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business
 21 practices alleged herein, Defendants have unfairly gained a competitive advantage
 22 over other comparable companies doing business in California that comply with
 23 their legal obligations to compensate employees for all earned wages.

24 135. As a result of Defendants' unfair competition as alleged herein,
 25 Plaintiffs and the Class Members have suffered injuries in fact and lost money or
 26 property. Plaintiffs and the Class Members were deprived of money for work related
 27 expenses, minimum wages, regular wages, overtime wages, doubletime wages,
 28



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1 missed rest period premium wages, missed meal period premium wages, and
2 comparable money and property.

3 136. Pursuant to California Business & Professions Code § 17203,
4 Plaintiffs and the Class Members are entitled to restitution of all monies rightfully
5 belonging to them that Defendants did not pay them or otherwise retained by means
6 of their unlawful and unfair business practices.

7 137. Plaintiffs and the Class Members are entitled to reasonable attorneys'
8 fees in connection with their unfair competition claims pursuant to California Code
9 of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common
10 fund doctrine.

11 EIGHTH CAUSE OF ACTION

12 CIVIL PENALTIES

13 (Lab Code §§2698, *et seq.*)

14 (By Plaintiff and the Aggrieved Employees against all Defendants)

15 138. Plaintiff incorporates all paragraphs of this Complaint as if fully
16 alleged herein.

17 139. The “Aggrieved Employees” are all members of the Class defined
18 above who Defendants employed during the period beginning May 11, 2020 and
19 ending on the date that final judgment is entered in this action.

20 140. California Labor Code §§ 2698 *et seq.* grant California employees the
21 right to bring a civil action for violation of any provision of the Labor Code on
22 behalf of themselves and other current or former employees to recover civil
23 penalties. In passing PAGA, the California Legislature

24 “declared that adequate financing of labor law enforcement was necessary to
25 achieve maximum compliance with state labor laws, that staffing levels for
26 labor law enforcement agencies had declined and were unlikely to keep pace
27 with future growth of the labor market, and that it was therefore in the public
28 interest to allow aggrieved employees, acting as private attorneys general, to



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1 recover civil penalties for Labor Code violations.”

2 *Arias v. Super. Ct.*, 46 Cal. 4th 969, 980 (2009).

3 141. PAGA permits aggrieved employees to collect the civil penalties
4 authorized by law and normally collectible by the Labor and Workforce
5 Development Agency (“LWDA”) or any of its departments or divisions. See Cal.
6 Lab. Code § 2699(a). However, because the action is brought on behalf of the state,
7 75% of the fees collected are distributed to the LWDA for the enforcement of labor
8 laws and for the education of employers and employees. The remaining 25% is
9 shared between the aggrieved employees. See Cal. Lab. Code § 2699(i).

10 142. PAGA provides that any civil penalty assessed and collected by the
11 LWDA for violations of applicable provisions of the California Labor Code may,
12 as an alternative, be recovered through a civil action brought by an aggrieved
13 employee on behalf of himself and other current or former employees pursuant to
14 procedures outlined in California Labor Code § 2699.3.

15 143. Pursuant to Labor Code § 2699.3(a)(1)(A), before commencing a civil
16 action, an aggrieved employee must first give notice by online filing with the
17 LWDA and by certified mail to the employer of the alleged violations, including
18 the facts and theories supporting the allegations. If the LWDA fails to investigate
19 the alleged violations within sixty-five calendar days of the date of the notice, then
20 the aggrieved employee may file a civil action to seek penalties.

21 144. Labor Code § 204 states

22
23
24 (a) All wages, other than those mentioned in Section 201, 201.3,
25 202, 204.1, or 204.2, earned by any person in any employment are due
26 and payable twice during each calendar month, on days designated in
27 advance by the employer as the regular paydays. Labor performed
28 between the 1st and 15th days, inclusive, of any calendar month shall
be paid for between the 16th and the 26th day of the month during
which the labor was performed, and labor performed between the 16th



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1 and the last day, inclusive, of any calendar month, shall be paid for
2 between the 1st and 10th day of the following month. ...

3 (b) (1) Notwithstanding any other provision of this section, all
4 wages earned for labor in excess of the normal work period shall be
5 paid no later than the payday for the next regular payroll period.

6 (2) An employer is in compliance with the requirements of
7 subdivision (a) of Section 226 relating to total hours worked by the
8 employee, if hours worked in excess of the normal work period during
9 the current pay period are itemized as corrections on the paystub for
10 the next regular pay period. Any corrections set out in a subsequently
11 issued paystub shall state the inclusive dates of the pay period for
12 which the employer is correcting its initial report of hours worked.

13 (c) However, when employees are covered by a collective
14 bargaining agreement that provides different pay arrangements, those
15 arrangements shall apply to the covered employees.

16 (d) The requirements of this section shall be deemed satisfied by the
17 payment of wages for weekly, biweekly, or semimonthly payroll if the
18 wages are paid not more than seven calendar days following the close
19 of the payroll period.

20 145. Defendants paid wages to employees on regular intervals. Defendants,
21 however, failed to pay Plaintiff on such intervals for all wages earned and all hours
22 worked. On information and belief, Plaintiff alleges that Defendants also failed to
23 pay the Aggrieved Employees on such intervals for all wages earned and all hours
24 worked.

25 146. Labor Code § 2350 states,

26 Every factory, workshop, mercantile or other establishment in which
27 one or more persons are employed, shall be kept clean and free from
28 the effluvia arising from any drain or other nuisance, and shall be
provided, within reasonable access, with a sufficient number of toilet
facilities for the use of the employees. When there are five or more
employees who are not all of the same gender, a sufficient number of



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1 separate toilet facilities shall be provided for the use of each sex,
2 which shall be plainly so designated.

3 147. Section 13 of the Wage Order states,

4 (A) Employers shall provide suitable lockers, closets, or equivalent
5 for the safekeeping of employees' outer clothing during
6 working hours, and when required, for their work clothing
7 during non-working hours. When the occupation requires a
8 change of clothing, change rooms or equivalent space shall be
9 provided in order that employees may change their clothing in
10 reasonable privacy and comfort. These rooms or spaces may be
11 adjacent to but shall be separate from toilet rooms and shall be
12 kept clean.

13 NOTE: This section shall not apply to change rooms and
14 storage facilities regulated by the Occupational Safety and
15 Health Standards Board.

16 (B) Suitable resting facilities shall be provided in an area separate
17 from the toilet rooms and shall be available to employees during
18 work hours.

19 148. Section 15(A) of the Wage Order states, "A temperature of not less
20 than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms
21 during hours of use."

22 149. Labor Code § 1198 makes it unlawful for an employer to employ an
23 employee under conditions that violate the Wage Order.

24 150. Labor Code § 1197.1 entitles employees who are paid less the
25 minimum wage fixed by state or local law, or by an order of the commission, to a
26 civil penalty, restitution of wages, and liquidated damages: "(1) [f]or any initial
27 violation that is intentionally committed, one hundred dollars (\$100) for each
28 unpaid employee for each pay period for which the employee is underpaid [and]
(2) [f]or each subsequent violation for the same specific offense, two hundred fifty



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1 dollars (\$250) for each underpaid employee for each pay period for which the
 2 employee is underpaid regardless of whether the initial violation is intentionally
 3 committed.

4 151. Labor Code § 6404 prohibits an employer from maintaining a place of
 5 employment “that is not safe and healthful.” The temperatures in O’Reilly’s
 6 locations/centers frequently exceed the limit for a safe and healthful workplace.
 7 For example, the temperatures in some of the Aggrieved Employees’
 8 locations/centers reached or exceeded 90 degrees.

9 152. Labor Code section 1174, which also pertains to recordkeeping, states
 10 in relevant part:

11 Every person employing labor in this state shall:

12 ...

13 (c) Keep a record showing the names and addresses of all
 14 employees employed and the ages of all minors.

15 (d) Keep, at a central location in the state or at the plants or
 16 establishments at which employees are employed, payroll
 17 records showing the hours worked daily by and the wages paid
 18 to, and the number of piece-rate units earned by and any
 19 applicable piece rate paid to, employees employed at the
 20 respective plants or establishments. These records shall be kept
 21 in accordance with rules established for this purpose by the
 22 commission, but in any case shall be kept on file for not less
 23 than three years. An employer shall not prohibit an employee
 24 from maintaining a personal record of hours worked, or, if paid
 25 on a piece-rate basis, piece-rate units earned.

26 153. Labor Code section 1174.5 states:

27 Any person employing labor who willfully fails to maintain the
 28 records required by subdivision (c) of Section 1174 or accurate and
 complete records required by subdivision (d) of Section 1174, or to



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1 allow any member of the commission or employees of the division to
 2 inspect records pursuant to subdivision (b) of Section 1174, shall be
 3 subject to a civil penalty of five hundred dollars (\$500).

4 154. Section 7 of the Wage Order states,

- 5 1. Every employer shall keep accurate information with
- 6 respect to each employee including the following:
- 7 2. Full name, home address, occupation and social security
- 8 number.
- 9 3. Birth date, if under 18 years, and designation as a minor.
- 10 4. Time records showing when the employee begins and
- 11 ends each work period. Meal periods, split shift intervals
- 12 and total daily hours worked shall also be recorded. Meal
- 13 periods during which operations cease and authorized
- 14 rest periods need not be recorded.
- 15 5. Total wages paid each payroll period, including value of
- 16 board, lodging, or other compensation actually furnished
- 17 to the Employee.
- 18 6. Total hours worked in the payroll period and applicable
- 19 rates of pay. This information shall be made readily
- 20 available to the employee upon reasonable request.
- 21 7. When a piece rate or incentive plan is in operation, piece
- 22 rates or an explanation of the incentive plan formula shall
- 23 be provided to employees. An accurate production record
- 24 shall be maintained by the employer.

25 155. Under Labor Code § 2102, warehouse and distribution center
 26 employees shall not be required to meet a quota that “prevents compliance with
 27 meal and rest periods, use of bathroom facilities, including reasonable travel time
 28 to and from bathroom facilities, or occupational health and safety laws in the Labor
 Code or division standards.”

156. Under Labor Code § 2103(a), any action by an employee to “comply
 with occupational health and safety laws in the Labor Code or division standards
 shall be considered on task and productive time for purposes of any quota or



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1 monitoring system.” Furthermore, “consistent with existing law, meal and rest
2 breaks are not considered productive time unless the employee is required to remain
3 on call.” (*Id.* at (b).)

4 157. During the applicable time period, Defendants violated California
5 Labor Code §§ 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226,
6 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
7 1197.2, 1198, 2102, 2103, 2350, 2802, and 6404.

8 158. California Labor Code §§ 2699(a) and (g) authorize an aggrieved
9 employee, on behalf of themselves and other current or former employees, to bring
10 a civil action to recover civil penalties pursuant to the procedures specified in
11 California Labor Code § 2699.3.

12 159. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
13 Class are entitled to recover civil penalties for each of the Defendants’ violations of
14 California Labor Code §§ 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6,
15 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
16 1197.1, 1197.2, 1198, 2102, 2103, 2350, 2802, and 6404 during the applicable
17 limitations period in the following amounts:

18 A. For violations of California Labor Code § 204, one hundred
19 dollars (\$100.00) for each Aggrieved Employee for each initial violation and two
20 hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent,
21 willful or intentional violation (penalty amounts established by California Labor
22 Code § 210).

23 B. For violations of California Labor Code § 223, one hundred
24 dollars (\$100.00) for each Aggrieved Employee for each initial violation and two
25 hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent,
26 willful or intentional violation (penalty amounts established by California Labor
27 Code § 225.5).
28



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1 C. For violations of California Labor Code § 226(a), two hundred
2 fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one
3 thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent
4 violation (penalty amounts established by California Labor Code § 226.3).

5 D. For violations of California Labor Code §§ 510 and 512, fifty
6 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred
7 dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per
8 pay period (penalty amounts established by California Labor Code § 558).

9 E. For violations of California Labor Code § 1174, five hundred
10 dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty
11 amounts established by Labor Code § 1174.5).

12 F. For violations of California Labor Code § 1197, one hundred
13 dollars (\$100.00) for each Aggrieved Employee for each initial and intentional
14 violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for
15 each subsequent violation, per pay period (regardless of whether the initial
16 violations were intentionally committed) (penalty amounts established by
17 California Labor Code § 1197.1).

18 G. For violations of California Labor Code §§ 201, 201.3, 202, 203,
19 226.7, 1194, 1198, 2102, 2103, 2802, and 2350, one hundred dollars (\$100.00) for
20 each Aggrieved Employee per pay period for each initial violation and two hundred
21 dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent
22 violation (penalty amounts established by California Labor Code § 2699(f)(2)).

23
24 160. On May 11, 2021, Plaintiff Pipich provided written notice of the
25 alleged violations, including the facts and theories supporting his allegations, to the
26 LWDA via online submission, with a certified copy mailed to Defendants. More
27 than sixty-five calendar days have passed since the date notice was provided to the
28 Labor and Workforce Development Agency (“LWDA”) and Defendants.



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1 Accordingly, Plaintiff Pipich has satisfied the administrative prerequisites under
2 California Labor Code § 2699.3(a) to recover civil penalties against Defendants for
3 violations of the Labor Code and the Wage Order.

4 161. On January 4, 2022, Plaintiff Pipich provided supplemental written
5 notice of further alleged violations, including the facts and theories supporting his
6 allegations, to the LWDA via amended online submission, with a certified copy
7 mailed to Defendants. More than sixty-five calendar days have passed since the
8 date the supplemental notice was provided to the LWDA and Defendants.
9 Accordingly, Plaintiff Pipich has satisfied the administrative prerequisites under
10 California Labor Code § 2699.3(a) to recover civil penalties against Defendants for
11 violations of the Labor Code and the Wage Order.

12 162. By letter dated August 11, 2021, Plaintiff Storm gave written notice
13 by certified mail to the LWDA and Defendants of the specific provisions of the
14 California Labor Code alleged to have been violated, including the facts and
15 theories to support the alleged violations. On January 5, 2022, Plaintiff Storm sent
16 a supplemental written notice by certified mail to the LWDA.

17 163. On May 16, 2024, pursuant to Labor Code section 2699.3, subd.(a),
18 Plaintiffs gave additional written notice to Defendants and the LWDA of
19 Defendants' violations of the Labor Code.

20 164. Pursuant to California Labor Code § 2699(g), Plaintiffs and the
21 Aggrieved Employees are entitled to an award of civil penalties, reasonable
22 attorney's fees and costs in connection with their claims for civil penalties.

23 **V. PRAYER FOR RELIEF**

24 165. WHEREFORE, Plaintiffs, on behalf of themselves and the Class
25 Members, pray for relief and judgment against Defendants as follows:

26 A. An order that the action be certified as a class action with respect
27 to Plaintiffs' claims for violations of California law;
28



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- 1 B. An order that Plaintiffs be appointed class representatives;
2 C. An order that counsel for Plaintiffs be appointed class counsel;
3 D. Unpaid wages, including minimum, regular, overtime, double-
4 time, missed meal period premium, missed rest period premium wages;
5 E. Liquidated damages;
6 F. Expense reimbursement;
7 G. Restitution;
8 H. Declaratory relief;
9 I. Actual damages;
10 J. Statutory penalties, including waiting time penalties;
11 K. Civil penalties;
12 L. Pre-judgment interest;
13 M. Costs of suit;
14 N. Reasonable attorneys' fees; and
15 O. Such other relief as the Court deems just and proper

16 **VII. DEMAND FOR JURY TRIAL**

17 Plaintiffs, on behalf of themselves and all other Class Members, hereby
18 demand a jury trial on all issues so triable.

19 Respectfully submitted,

20 THE SPIVAK LAW FIRM

21
22 Dated: May 20, 2024

23 By: /s/ David Spivak
24 DAVID SPIVAK
25 CAROLINE TAHMASSIAN
26 Attorneys for Plaintiffs and all
27 others similarly situated
28



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