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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Mouang Saechao, Deputy

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Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY, LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 || Fax: (951) 320-1445

Mehrdad Bokhour, Esq. (Cal. Bar No. 285256)
mehrdad@bokhourlaw.com
BOKHOUR LAW GROUP, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493 | Fax: (310) 675-0861

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

SCOTT KLIMEK, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KINGSPAN INSULATED PANELS, INC., a
Florida Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CV-21-004201

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Pay Vested Vacation;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Timely Pay Wages Each Period;
- (14) Failure to Timely Pay Final Wages; and
- (15) Failure to Provide Accurate Itemized Wage Statements

This case has been assigned to Judge Freeland, John D
Dept. 23
Department for all purposes including Trial.

1 Plaintiff Scott Klimek (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Kingspan Insulated
5 Panels, Inc. and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of all
6 current and former nonexempt employees employed by Defendants in California (the “Class” or
7 “Represented Employees”)¹, for Labor Code violations stemming from Defendants’ failure to
8 pay all wages owed, including minimum, regular, and overtime wages, failure to provide meal
9 periods, failure to provide rest breaks, failure to pay vested vacation, failure to timely pay wages,
10 and failure to provide accurate itemized wage statements.

11 2. Plaintiff was employed by Defendants from approximately October 2020 through
12 August 2021.

13 3. Plaintiff alleges on information and belief that the Represented Employees were
14 subjected to the same policies, working conditions, and corresponding wage and hour violations
15 to which Plaintiff was subjected during employment.

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked. As one such example, Defendants required Plaintiff and the Represented Employees to
19 undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However,
20 because this time was spent under Defendants’ control but before being allowed to clock in, it
21 was uncompensated in violation of California law and led to minimum and overtime wage
22 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es]
23 not allow employers to require employees to routinely work for minutes off the clock without
24 compensation”).

25 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
26 Represented Employees. For example, Defendants paid Plaintiff and the Represented
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¹ This definition specifically includes direct hires and employees placed by a staffing agency; Plaintiff alleges that all staffed employees were jointly employed by Defendants and the staffing agency.

1 Employees on an hourly basis but also paid additional earned compensation (such as shift
2 differentials) and/or bonuses. However, during workweeks where the Represented Employees
3 worked overtime hours and earned additional nondiscretionary compensation and/or bonuses,
4 Defendants failed to properly include that compensation in the calculations for the regular rate of
5 pay – violating the well-established rule that overtime must always be paid at time and one-half
6 the regular rate of pay.

7 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
8 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
9 the Represented Employees were subjected to meal period violations when they were: (1) unable
10 to take meal periods due to workload, (2) forced to take on-duty meal periods while under
11 Defendants’ control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour
12 of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not
13 provided mandated second meal periods for shifts over 10 hours.

14 7. Moreover, on the occasions when Plaintiff and the Represented Employees were
15 denied compliant meal periods, Defendants failed to pay the “premium” required under Labor
16 Code § 226.7. And, on the occasions when Defendants did pay a premium for such violations, it
17 only paid at the employee’s base rate rather than at the employee’s “regular rate,” as mandated
18 by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021) No. S259172,
19 2021 Cal. LEXIS 4877 (the California Supreme Court unanimously held that the meal (and rest
20 period) premiums must be calculated in the same fashion as overtime pay and, therefore, must
21 factor in shift differential pay and other forms of nondiscretionary compensation).

22 8. Defendants also failed to provide Plaintiff and the Represented Employees with
23 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
24 mandated by California law. Defendants did not schedule rest breaks and the Represented
25 Employees were often not authorized and/or permitted to take mandated rest breaks due to the
26 lack of adequate staffing and coverage and being overwhelmed by the hectic workload.
27 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
28 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

1 9. Additionally, Defendants failed to maintain any mechanism for the payment of
2 rest period premium payments as required by Labor Code § 226.7.

3 10. Also, at all relevant times, Defendants utilized a policy and practice through
4 which Plaintiff and the Represented Employees accrued vacation and/or PTO hours (collectively,
5 “vacation hours”). However, on occasions when Plaintiff and the Represented Employees had
6 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
7 these wages and, further, failed to pay them at the “final rate” required by Labor Code § 227.3.

8 11. Plaintiff also alleges that he and the Represented Employees were not paid all
9 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
10 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
11 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
12 Employees at the time their employment ended with Defendants, including, but not limited to
13 minimum, regular, and overtime wages, vacation and sick pay, wage premiums, among others.

14 12. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
15 statements that fully complied with the requirements of Labor Code § 226(a). This claim is
16 detailed below, but one example relates to Defendants’ practice of paying Plaintiff and the
17 Represented Employees shift differentials at a set rate of pay. These shift differentials were
18 indisputably an “applicable hourly rate” during the periods when they were earned, yet
19 Defendants’ wage statements failed to provide information regarding the hourly rate of pay or
20 hours worked at the shift differential hourly rate in violation of Labor Code § 226(a)(9).

21 13. Plaintiff alleges that Defendants’ violations of the wage and hour components of
22 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
23 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
24 its competitors.

25 14. At all material times, Defendants and DOES 1 through 20 were and/or are the
26 Represented Employees’ employers or persons acting on behalf of the Represented Employees’
27 employer, within the meaning of California Labor Code § 558, who violated or caused to be
28 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating

1 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
2 underpaid employee as set forth in Labor Code § 558 and under California law.

3 15. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
4 monetary relief against Defendants and each of them, on behalf of himself and the Represented
5 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
6 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
7 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and
8 1199, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to
9 name additional representatives throughout the State of California.

10 16. Pursuant to Labor Code § 2699.3(a), on August 5, 2021, Plaintiff gave written
11 notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by
12 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
13 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
14 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
15 and this Complaint will be deemed amended to include the PAGA allegations enumerated below
16 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
17 the LWDA chooses not to investigate the allegations herein.

18 **II. JURISDICTION**

19 17. This Court has jurisdiction over the claims for relief of Plaintiff and the
20 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

21 **III. VENUE**

22 18. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
23 Procedure § 395(a). Defendants transact business in Stanislaus County and the unlawful acts
24 alleged herein have a direct effect on Plaintiff and the Represented Employees in Stanislaus
25 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in
26 Stanislaus County.
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1 **IV. PARTIES**

2 **Plaintiff**

3 19. Plaintiff and Class Representative Scott Klimek was employed by Defendants
4 from approximately October 2020 through August 2021 and performed work for Defendants in
5 Stanislaus County.

6 **Defendants**

7 20. Plaintiff is informed and believes and thereon alleges that Defendant Kingspan
8 Insulated Panels, Inc., is a Florida Corporation authorized to and doing business in Stanislaus
9 County, California. Plaintiff is also informed and believes that Defendant Kingspan Insulated
10 Panels, Inc. is and/or was the legal employer of Plaintiff and the Represented Employees during
11 the applicable statutory periods.

12 21. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
13 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
14 inclusive, but on information and belief alleges that those Defendants are legally responsible for
15 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
16 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
17 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
18 Defendants when ascertained.

19 22. Plaintiff is informed and believes and thereon alleges that he and the Represented
20 Employees worked under the joint direction and control of Defendants and that Defendants, and
21 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
22 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
23 each Defendant are legally attributable to the other Defendants. On information and belief, a
24 unity of interest and ownership between each Defendant exists such that all Defendants acted as
25 a single employer of Plaintiff and other Represented Employees.

26 23. Furthermore, Plaintiff is informed and believes and thereon alleges that
27 Defendants, and each of them, are an integrated enterprise and should be treated as a single
28 employer because these entities share an interrelation of operations, with common human

resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

24. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

25. Plaintiff is further informed and believes that at all relevant times, Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

26. Plaintiff incorporates the preceding paragraphs of Complaint as if fully alleged herein.

27. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Code of Civil Procedure § 382.

28. The relevant time period for this class action is defined as the period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

1 29. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
2 represent is defined as follows:

3 **California Class**²

4 All current and former nonexempt employees employed by
5 Defendants in California during the Relevant Time Period.

6 30. Plaintiff also seeks to represent the following subclasses:

7 **Meal Break Subclass**

8 All Represented Employees who worked a shift in excess of
9 5 hours during the Relevant Time Period.

10 **Rest Break Subclass**

11 All Represented Employees who worked a shift of at least
12 3.5 hours during the Relevant Time Period.

13 **Vested Vacation Subclass**

14 All Represented Employees who had accrued but unused
15 vacation upon separation of employment during the period
16 four years before the filing of this action and ending when
17 final judgment is entered.

18 **Waiting Time Penalties Subclass**

19 All Represented Employees who separated from their
20 employment with Defendants during the period three years
21 before the filing of this action and ending when final
22 judgment is entered.

23 **Wage Statement Penalties Subclass**

24 All Represented Employees during the period one year
25 before the filing of this action and ending when final
26 judgment is entered.

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² This definition specifically includes direct hires *and* employees placed by a staffing agency; Plaintiff alleges that all staffed employees were jointly employed by Defendants and the staffing agency.

1 31. Plaintiff reserves the right to amend or modify the class description with greater
2 specificity or further division into subclasses or limitation to particular issues as appropriate.

3 32. Plaintiff, as Class Representative, is a member of the class and subclasses that he
4 seeks to represent.

5 33. This action has been brought and may properly be maintained as a class action
6 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation and the proposed class is easily ascertainable from Defendants' records.

8 34. **Numerosity:** The potential members of the Class as defined are so numerous that
9 a joinder of all Represented Employees is impracticable. Although the exact number is currently
10 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

11 35. **Commonality:** There are questions of law and fact common to the class which
12 predominate over any questions affecting only individual members of the class, including
13 without limitation:

14 i. Whether Defendants violated the California Labor Code and applicable
15 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
16 hours worked;

17 ii. Whether Defendants violated the California Labor Code and applicable
18 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
19 Employees for hours above 8 and/or 12 per day and/or 40 per week;

20 iii. Whether Defendants violated the California Labor Code and applicable
21 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
22 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
23 with one additional hour of wages at the regular rate of pay for each instance when a compliant
24 meal period was not provided;

25 iv. Whether Defendants violated the California Labor Code and applicable
26 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
27 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
28 with one additional hour of wages at the regular rate of pay for each instance when a paid rest

break was not provided;

v. Whether Defendants violated the California Labor Code by failing to compensate Plaintiff and the Vested Vacation Subclass for all accrued but unused vacation hours upon separation of employment;

vi. Whether Defendants violated the California Labor Code by failing to timely pay all wages due upon separation of employment between Defendants and Plaintiff and the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

vii. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized wage statements;

viii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

ix. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

36. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to pay vested vacation, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

37. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

38. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this

1 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
2 law and fact common to the Class predominate over any questions affecting only individual
3 members of the Class. Each Represented Employee has been damaged and is entitled to
4 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
5 treatment will allow those similarly situated persons to litigate their claims in the manner that is
6 most efficient and economical for the parties and the judicial system.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

9 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

10 *Plaintiff and the Represented Employees Against All Defendants*

11 39. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 40. Plaintiff and the Represented Employees were not exempt from the requirement
14 to be paid at least the applicable California minimum wage throughout the statutory period for
15 each hour worked.

16 41. Plaintiff and the Represented Employees were not provided proper minimum and
17 regular wages due to Defendants' failure to accurately record and compensate for all hours
18 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
19 required to perform off-the-clock work that Defendants either knew or should have known they
20 were performing.

21 42. Consequently, Defendants violated California Labor Code laws and minimum
22 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
23 Cal. Code Regs., tit. 8, section 11090, subs. 1 and 4(B).

24 43. Plaintiff is informed and believes and thereon alleges that Defendants
25 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
26 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

27 44. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
28 Represented Employees were entitled to be paid wages throughout the statutory period for each

1 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
2 them in accordance thereto.

3 45. At all material times, Defendants DOES 1 through 20 were and/or are the
4 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
5 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
6 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
7 Labor Code regulating hours and days of work respectively.

8 46. During employment of Plaintiff and the Represented Employees, Defendants
9 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

10 47. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
11 Employees have been damaged in amounts to be proven at trial.

12 48. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
13 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
14 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
15 at trial.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME WAGES**

18 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

19 *Plaintiff and the Represented Employees Against All Defendants*

20 49. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

22 50. Plaintiff and the Represented Employees were employees of Defendants who did
23 not receive proper protections and benefits of the laws governing payment of overtime wages.

24 51. Labor Code § 204 requires that the employer timely pay all overtime wages to its
25 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
26 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
27 any one workweek shall be compensated at the rate of no less than one and one-half times the
28 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)

1 in one workday shall be compensated at twice the regular rate of pay for an employee.

2 52. At all relevant times, Plaintiff and the Represented Employees were required by
3 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
4 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
5 Represented Employees did not receive proper overtime compensation.

6 53. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
7 Represented Employees due to the failure to properly include all earned and nondiscretionary
8 compensation in the calculation for the regular rate of pay and overtime rate.

9 54. At all relevant times, Defendants paid Plaintiff and the Represented Employees on
10 an hourly basis but also paid additional earned nondiscretionary compensation (such as shift
11 differentials) and/or bonuses. However, during workweeks where the Represented Employees
12 worked overtime hours and earned additional nondiscretionary compensation and/or bonuses,
13 Defendants failed to properly include the bonuses in the calculations for the regular rate of pay –
14 violating the well-established rule that overtime must always be paid at time and one-half the
15 regular rate of pay.

16 55. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
17 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
18 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
19 week without proper overtime compensation.

20 56. Plaintiff is informed and believes and thereon alleges that Defendants
21 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
22 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

23 57. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
24 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
25 period, yet Defendants chose not to pay them in accordance thereto.

26 58. At all material times, Defendants DOES 1 through 20 were and/or are the
27 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
28 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be

1 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
2 Labor Code regulating hours and days of work respectively.

3 59. During the employment of Plaintiff and the Represented Employees, Defendants
4 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

5 60. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
6 Employees have been damaged in amounts to be proven at trial.

7 61. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
8 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
9 Defendants in an amount to be proven at trial.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

13 *Plaintiff and the Meal Break Subclass Against All Defendants*

14 62. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 63. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing mandatory meal
18 periods.

19 64. Labor Code § 226.7 requires employers, including Defendants, to provide
20 employees with meal periods as mandated by the Industrial Welfare Commission.

21 65. Labor Code § 512(a), in part, provides that employers, including Defendants, may
22 not employ an employee for a work period of more than five hours per day without providing an
23 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
24 except that if the total work period per day of the employee is no more than six hours, the meal
25 period may be waived by mutual consent of both the employer and the employee. Employers
26 may not employ an employee for a work period more than 10 hours per day without providing
27 the employee with a second meal period of not less than 30 minutes.

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1 66. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
2 Defendants shall pay an employee one additional hour of pay at the employee’s regular rate of
3 pay for each meal period that is missed.

4 67. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
5 the 30-minute meal periods to which they were entitled. As a result of Defendants’ policies and
6 practices, Plaintiff and the Represented Employees were subjected to meal period violations
7 when they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal
8 periods while under Defendants’ control, (3) forced to take meal periods, if such a meal
9 occurred, after the 5th hour of work, (4) not provided a mandated first meal period for shifts in
10 excess of 6 hours, and (5) not provided mandated second meal periods for shifts over 10 hours.

11 68. Moreover, on the occasions when Plaintiff and the Represented Employees were
12 denied compliant meal periods, Defendants failed to pay the “premium” required under Labor
13 Code § 226.7. And, on the occasions when Defendants did pay a premium for such violations, it
14 only paid at the employee’s base rate rather than at the employee’s “regular rate,” as mandated
15 by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021) No. S259172,
16 2021 Cal. LEXIS 4877 (the California Supreme Court unanimously held that the meal (and rest
17 period) premiums must be calculated in the same fashion as overtime pay and, therefore, must
18 factor in shift differential pay and other forms of nondiscretionary compensation).

19 69. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
20 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
21 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
22 additional hour of compensation at the regular rate of pay in lieu thereof.

23 70. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
24 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
25 meal or rest periods, thereby receiving an economic benefit.

26 71. On information and belief, Plaintiff and the Meal Break Subclass did not
27 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
28 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not

1 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
2 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
3 to take meal periods in accordance with California law.

4 72. By their failure to provide Plaintiff and the Meal Break Subclass with meal
5 periods as required by California law, and failing to pay one hour of additional wages in lieu of
6 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
7 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
8 the employee's regular rate of compensation for each work day that a meal period was not
9 lawfully provided in an amount to be proven at time of trial.

10 73. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
11 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
12 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST BREAKS**

15 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

16 *Plaintiff and the Rest Break Subclass Against All Defendants*

17 74. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
18 alleged herein.

19 75. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
20 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

21 76. Labor Code § 226.7 requires employers, including Defendants, to provide rest
22 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

23 77. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
24 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
25 each work period. Employees shall receive a 10-minute rest period every four hours or major
26 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
27 hours worked, for which there shall be no deduction from wages.

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1 78. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
2 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
3 at his regular rate of compensation for each day that the rest period is not provided.

4 79. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
5 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
6 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
7 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
8 to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload.
9 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
10 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

11 80. Additionally, Defendants failed to maintain any mechanism for the payment of
12 rest period premium payments as required by Labor Code § 226.7.

13 81. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
14 Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all
15 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
16 one additional hour of compensation in lieu thereof.

17 82. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
18 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
19 rest periods, thereby receiving an economic benefit.

20 83. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
21 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
22 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
23 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
24 employee's regular rate of compensation for each workday that a paid rest break was not
25 lawfully provided in an amount to be proven at time of trial.

26 84. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
27 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
28 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY VESTED VACATION**

3 (Labor Code § 227.3)

4 *Plaintiff and the Vested Vacation Subclass Against All Defendants*

5 85. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 86. Plaintiff and the Vested Vacation Subclass were employees of Defendants who
8 did not receive proper protections and benefits of the laws governing the payment of vested
9 vacation time and/or paid time off upon separation of employment.

10 87. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
11 vacation, paid time off, or compensated time off policy must, upon an employee's separation
12 from employment, pay to the employee all vested but unused vacation and/or paid time off at her
13 final rate of pay.

14 88. At all relevant times, Defendants utilized a policy and practice through which
15 Plaintiff and the Vested Vacation Subclass accrued vacation and/or PTO hours (collectively,
16 "vacation hours"). However, on occasions when Plaintiff and the Vested Vacation Subclass had
17 accrued but unused vacation hours upon separation of employment, Defendants failed to pay
18 these wages and, further, failed to pay them at the "final rate" required by Labor Code § 227.3.

19 89. As a result, Plaintiff and the Vested Vacation Subclass did not receive
20 compensation for all accrued but unused vacation hours as required by Labor Code § 227.3.

21 90. At all relevant times herein, Defendants failed to pay the Vested Vacation
22 Subclass, including Plaintiff, all vested but unused vacation time and/or paid time off upon
23 separation from employment, thereby receiving an economic benefit.

24 91. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
25 them, knowingly refused to perform their obligations to compensate the Vested Vacation
26 Subclass for all vested but unused vacation time and/or paid time off upon separation from
27 employment.

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1 92. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the
2 Vested Vacation Subclass seek to recover the unpaid vacation hours, as well as penalties,
3 interest, attorneys' fees, and costs as permitted under California law.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO TIMELY PAY FINAL WAGES**

6 (Labor Code §§ 201 – 203)

7 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

8 93. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 94. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
11 Defendants who did not receive proper protections and benefits of the laws governing the timing
12 and payment of wages.

13 95. Labor Code § 201 requires that the employer immediately pay any wages, without
14 abatement or reduction, to any employee who is discharged.

15 96. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
16 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
17 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

18 97. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
19 penalty from the due date thereof at the same rate until paid or until an action therefore is
20 commenced, but the wages shall not continue for more than thirty (30) days.

21 98. At all relevant times, Defendants employed a policy and practice whereby
22 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
23 separation of employment within the time required by Labor Code §§ 201 and 202.

24 99. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
25 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
26 employment, including, but not limited to, minimum, regular, and overtime wages, vested
27 vacation, as well as meal and rest period premiums.

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1 100. Additionally, at all relevant times, Defendants failed to pay all mandated sick
2 wages owed to the Waiting Time Penalties Subclass at the proper rate of pay.

3 101. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
4 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
5 employee uses paid sick time, whether or not the employee actually works overtime in that
6 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
7 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
8 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

9 102. Here, Plaintiff and the Waiting Time Penalties Subclass were compensated on an
10 hourly basis plus additional compensation in the form of shift differentials and/or
11 nondiscretionary bonuses. However, on the occasions that the Waiting Time Penalties Subclass
12 took sick time and received paid sick leave, Defendants only paid sick time at the base rate of
13 pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)),
14 leading to unpaid wages at the time of separation of employment.

15 103. Plaintiff alleges that, at all times material to this action, Defendants had a planned
16 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
17 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
18 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting
19 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
20 according to proof at trial and within the jurisdiction of this Court.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

23 (Labor Code § 226)

24 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

25 104. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
26 alleged herein.

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1 105. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing the
3 provision of accurate itemized wage statements.

4 106. Labor Code § 226(a) requires an employer to provide its employees with itemized
5 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
6 inclusive dates of the pay period, the employee's name and the last four digits of his or her
7 Social Security number (or employee identification number), the name and address of the legal
8 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee.

10 107. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
11 and the Wage Statement Penalties Subclass because Defendants failed to provide a wage
12 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
13 requirements of Labor Code § 226(a).

14 108. Due to violations discussed herein, Defendants' wage statements failed to
15 accurately state total hours worked, the hours worked at each hourly rate, the accurate rates of
16 pay, and further failed to accurately state gross wages earned, all deductions, and net wages
17 earned. Additionally, Defendants' wage statements frequently failed to state the accurate
18 overtime rate of pay.

19 109. Defendants also failed to comply with Labor Code § 226(a) in another respect. At
20 all relevant times, Defendants paid Plaintiff and the Wage Statement Penalties Subclass shift
21 differentials at a set rate of pay. These shift differentials were indisputably an "applicable hourly
22 rate" during the periods when they were earned, yet Defendants' wage statements failed to
23 provide information regarding the hourly rate of pay or the number of hours worked at the shift
24 differential hourly rate in violation of Labor Code § 226(a)(9).

25 110. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
26 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
27 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
28 requirements of Labor Code § 226(a).

1 111. Defendants' failure to provide the required writing deprived Plaintiff and the
2 Wage Statement Penalties Subclass of the ability to know, understand, and question the
3 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
4 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
5 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
6 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
7 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
8 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
9 perform its obligation under state law, all to their respective damages in amounts according to
10 proof at trial.

11 112. As a result of Defendants' knowing and intentional failure to comply with Labor
12 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
13 that each was prevented from knowing, understanding and disputing the wage payments paid to
14 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
15 injury in that the failure to show all wages earned on the itemized wage statements resulted in
16 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
17 withholdings owed by the employer, including, but not limited to, the failure to make all
18 necessary contributions for unemployment benefits, social security benefits, proper payment of
19 taxes and withholdings, and other mandated state and federal benefits.

20 113. Plaintiff has also been injured as a result of having to bring this action to attempt
21 to obtain correct wage information following Defendants' refusal to comply with many of the
22 mandates of California's Labor Code and related laws and regulations.

23 114. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
24 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
25 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
26 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
27 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
28 applicable penalty is all in an amount to be shown according to proof at trial.

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR AND UNLAWFUL COMPETITION**

3 (Business and Professions Code § 17200 *et seq.*)

4 *Plaintiff and the Represented Employees against All Defendants*

5 115. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 116. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
8 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
9 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
10 due to the unfair and unlawful business practices of Defendants as alleged herein.

11 117. Defendants, and each of them, are “persons” as defined under Business &
12 Professions Code § 17021.

13 118. As alleged herein, Defendants engaged in conduct that violated California’s wage
14 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to pay all
15 required vacation and sick pay, failure to provide mandated meal periods and rest breaks, and
16 failure to timely pay final wages, all to decrease their costs and increase their profits.

17 119. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
18 Employees wages and monies and other financial obligations to which they were entitled.

19 120. As a result of Defendants’ failure to comply with the Labor Code and IWC
20 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
21 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
22 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

23 121. Defendants’ violations of the California Labor Code and IWC Wage Orders and
24 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
25 practices because it was done in a systematic manner over a period of time to the detriment of the
26 Plaintiff and all others similarly-situated.

27 122. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
28 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.

1 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
2 of Civil Procedure § 1021.5.

3 123. A violation of California Business & Professions Code § 17200, et seq. may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code and IWC Wage Orders, are
6 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
8 practices in violation of California Business and Professions Code §§ 17200, et seq.

9 124. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
10 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
11 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
12 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
13 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
14 harm unless Defendants, and each of them, are restrained from continuing to engage in said
15 unfair, unlawful and/or fraudulent business practices.

16 125. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
17 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
18 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
19 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
20 Represented Employees are not obligated to establish individual knowledge of the unfair
21 practices of Defendants in order to recover restitution.

22 126. Plaintiff, individually, and on behalf of the Represented Employees, is further
23 entitled to and do seek a declaration that the above described business practices are unfair,
24 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
25 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
26 the future.

27 127. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
28 Represented Employees are entitled to restitution of the wages withheld and retained by

Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION
(Cal. Lab. Code. §§ 2698 – 2699.5)

128. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of himself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed (hereinafter the “Aggrieved Employees”).

129. Pursuant to Labor Code § 2699.3(a), on August 5, 2021, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

130. Therefore, once more than sixty-five (65) days have passed since that date, Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this Complaint will be deemed amended to include the PAGA allegations enumerated below. Once this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

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1 **NINTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 131. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 132. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
8 be paid at least the applicable California minimum wage throughout the statutory period for each
9 hour worked.

10 133. Plaintiff and the Aggrieved Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were
13 required to perform off-the-clock work that Defendants either knew or should have known they
14 were performing.

15 134. Consequently, Defendants violated California Labor Code laws and minimum
16 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
17 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

18 135. Plaintiff is informed and believes and thereon alleges that Defendants
19 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
20 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

21 136. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

Plaintiff and the Aggrieved Employees against All Defendants

137. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

138. Plaintiff and the Aggrieved Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

139. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

140. At all relevant times, Plaintiff and the Aggrieved Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the Aggrieved Employees did not receive proper overtime compensation.

141. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the Aggrieved Employees due to the failure to properly include all earned and nondiscretionary compensation in the calculation for the regular rate of pay and overtime rate.

142. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

143. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

1 144. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **ELEVENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

6 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 145. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 146. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory meal
12 periods.

13 147. Labor Code § 226.7 requires employers, including Defendants, to provide
14 employees with meal periods as mandated by the Industrial Welfare Commission.

15 148. Labor Code § 512(a), in part, provides that employers, including Defendants, may
16 not employ an employee for a work period of more than five hours per day without providing an
17 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
18 except that if the total work period per day of the employee is no more than six hours, the meal
19 period may be waived by mutual consent of both the employer and the employee. Employers
20 may not employ an employee for a work period more than 10 hours per day without providing
21 the employee with a second meal period of not less than 30 minutes.

22 149. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
23 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
24 pay for each meal period that is missed.

25 150. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
26 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
27 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
28 they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal

1 periods while under Defendants' control, (3) forced to take meal periods, if such a meal
2 occurred, after the 5th hour of work, (4) not provided a mandated first meal period for shifts in
3 excess of 6 hours, and (5) not provided mandated second meal periods for shifts over 10 hours.

4 151. Furthermore, on the occasions that Defendants paid Plaintiff and the Aggrieved
5 Employees a meal premium under Labor Code § 226.7 for a missed/denied meal period,
6 Defendants paid this premium at the base rate of pay instead of at the "regular rate" which
7 incorporates additional nondiscretionary compensation (such as shift differentials and bonuses).

8 152. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
9 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
10 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
11 one additional hour of compensation at the regular rate of pay in lieu thereof.

12 153. On information and belief, Plaintiff and the Aggrieved Employees did not
13 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
14 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
15 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
16 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
17 Employees to take meal periods in accordance with California law.

18 154. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
19 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
20 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

21 **TWELFTH CAUSE OF ACTION**

22 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

23 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

24 *Plaintiff and the Aggrieved Employees against All Defendants*

25 155. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
26 alleged herein.

27 156. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
28 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

1 157. Labor Code § 226.7 requires employers, including Defendants, to provide rest
2 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

3 158. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
4 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
5 each work period. Employees shall receive a 10-minute rest period every four hours or major
6 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
7 hours worked, for which there shall be no deduction from wages.

8 159. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
9 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
10 at his regular rate of compensation for each day that the rest period is not provided.

11 160. At all relevant times, Defendants also failed to provide Plaintiff and the
12 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
13 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
14 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
15 due to the lack of adequate staffing and coverage and being overwhelmed by their hectic
16 workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in
17 excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest
18 break.

19 161. Additionally, Defendants failed to maintain any mechanism for the payment of
20 rest period premium payments as required by Labor Code § 226.7.

21 162. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
22 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
23 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
24 one additional hour of compensation in lieu thereof.

25 163. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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2 **THIRTEENTH CAUSE OF ACTION**

3 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

4 (Labor Code § 204)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 164. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 165. Plaintiff and the Aggrieved Employees are and/or were “nonexempt” employees
9 of Defendants who did not receive proper protections and benefits of the laws regarding the
10 timing of payment of wages each period.

11 166. Labor Code § 204(a) states that all wages earned by a person are due and payable
12 twice during each calendar month, and further states that wages earned during the first through
13 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
14 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
15 the following month.

16 167. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
17 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
18 the wages are paid not more than seven calendar days following the close of the payroll period.”

19 168. At all relevant times herein, Defendants did not provide Plaintiff and the
20 Aggrieved Employees with all wages due and owing each period within the time required by
21 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
22 Employees with all wages due and owing each pay period, including, but not limited to,
23 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
24 time specified by Labor Code § 204.

25 169. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **FOURTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203 and 256)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 170. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 171. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
8 of Defendants who did not receive proper protections and benefits of the laws governing the
9 timing and payment of final wages.

10 172. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 173. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 174. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 175. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
19 Employees with all wages due and owing upon separation of employment, including, but not
20 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
21 within the time specified by Labor Code §§ 201 – 203.

22 176. Additionally, at all relevant times, Defendants failed to pay all mandated sick
23 wages owed to the Aggrieved Employees at the proper rate of pay.

24 177. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees
25 must be “calculated in the same manner as the regular rate of pay for the workweek in which the
26 employee uses paid sick time, whether or not the employee actually works overtime in that
27 workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
28 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the

1 employee's total hours worked in the full pay periods of the prior 90 days of employment."

2 178. Here, Plaintiff and the Aggrieved Employees were compensated on an hourly
3 basis plus additional compensation in the form of shift differentials and/or nondiscretionary
4 bonuses. However, on the occasions that the Aggrieved Employees took sick time and received
5 paid sick leave, Defendants only paid sick time at the base rate of pay (not factoring in the
6 additional compensation as required by Labor Code §§ 246(l)(1-2)), leading to unpaid wages at
7 the time of separation of employment.

8 179. Plaintiff alleges that, at all times material to this action, Defendants had a planned
9 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
10 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

11 180. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
12 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
13 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

14 **FIFTEENTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

17 (Labor Code § 226)

18 *Plaintiff and the Aggrieved Employees against All Defendants*

19 181. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

21 182. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
22 who did not receive proper protections and benefits of the laws governing the provision of
23 accurate itemized wage statements.

24 183. Labor Code § 226(a) requires an employer to provide its employees with itemized
25 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
26 inclusive dates of the pay period, the employee's name and the last four digits of his or her
27 Social Security number (or employee identification number), the name and address of the legal
28 entity that is the employer, and all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee.

2 184. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
3 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
4 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

5 185. Due to violations discussed herein, Defendants' wage statements failed to
6 accurately state total hours worked, the hours worked at each hourly rate, the accurate rates of
7 pay, and further failed to accurately state gross wages earned, all deductions, and net wages
8 earned. Additionally, Defendants' wage statements frequently failed to state the accurate
9 overtime rate of pay.

10 186. Defendants also failed to comply with Labor Code § 226(a) in another respect. At
11 all relevant times, Defendants paid Plaintiff and the Aggrieved Employees shift differentials at a
12 set rate of pay. These shift differentials were indisputably an "applicable hourly rate" during the
13 periods when they were earned, yet Defendants' wage statements failed to provide information
14 regarding the hourly rate of pay or the number of hours worked at the shift differential hourly
15 rate in violation of Labor Code § 226(a)(9).

16 187. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
17 to Plaintiff and the Aggrieved Employees because Defendants' wage statements failed to comply
18 with the requirements of Labor Code § 226(a).

19 188. As a result of the Defendants' violations of Labor Code §226(a)(9), Plaintiff seeks
20 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
21 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
22 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
23 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

24 **VII. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
26 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
27 follows:

28 ///

1. As to the Ninth through Fifteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1197, 1198, 1199, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial as to the First through Eighth Causes of Action pled herein.

Dated: August 5, 2021

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff