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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

CARLOS AGUILAR, MARIA
ALCAZAR, LIZVETTE SALGADO and
ELPIDIA ALCAZAR individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

FARMGIRL FLOWERS, INC., a
California Corporation; CHRISTINA
STEMBEL; and DOES 1 through 50,
inclusive,

Defendants.

Case No. RG21107981

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES, INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
PENALTIES AND RESTITUTION**

1. Failure to Pay Wages For All Hours Worked (Cal. Lab. Code §§ 204, 218, 1194, 1194.2);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 218, 510, 1194);
3. Failure to Provide Mandatory Meal-and-Rest Breaks (Cal. Lab. Code §§ 226.7, 512);
4. Violation of Labor Code § 2802 (Unreimbursed Business Expenses);
5. Violation of Cal. WARN Act (Cal. Labor Code § 1400 et. seq.)
6. Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226, 1174);
7. Waiting Time Penalties (Cal. Labor Code §§ 201-203); and
8. Violation of California's Unfair Competition Law (Cal. Business & Professions Code §§ 17200, et seq.).
9. Violation of Labor Code §§ 2698 et seq. ("PAGA");

DEMAND FOR JURY TRIAL

1 1. Plaintiffs CARLOS AGUILAR, MARIA ALCAZAR, LIZVETTE SALGADO
2 and ELPIDIA ALCAZAR (“Plaintiffs”), individually, and on behalf of themselves and classes of
3 those similarly situated, file this First Amended Class Action Complaint against Defendants
4 FARMGIRL FLOWERS, INC., a California Corporation; Christina Stembel; and DOES 1
5 through 50 (collectively, “Defendants”), and alleges as follows:

6
7 **I. INTRODUCTION AND FACTUAL BACKGROUND**

8 2. Plaintiffs bring this class action pursuant to Code of Civil Procedure § 382
9 against Defendants for, among other things: (a) nonpayment of wages (including minimum
10 wages and overtime wages at the proper rate); (b) failure to reimburse for business expenses;
11 (c) nonprovision of compliant meal periods; (d) nonprovision of compliant rest breaks; (e)
12 violation of Cal-WARN; (f) failure to provide accurate wage statements; and (g) for failure to
13 pay all wages due upon termination of employment.

14 3. For the four years prior to the filing of the original Complaint (plus any tolling) to
15 the present (the “Class Period”), Defendants have and continue to employ non-exempt hourly
16 employees.

17 4. Plaintiffs are informed and believe, and thereon allege, that at all times herein
18 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
19 advisors knowledgeable about California labor and wage law, employment and personnel practices,
20 and about the requirements of California law.

21 5. Labor Code § 1198 provides: “The maximum hours of work and the standard
22 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
23 conditions of labor for employees. The employment of any employee for longer hours than those
24 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

25 6. In accordance with its power under section 1198, the Industrial Welfare
26 Commission adopted Wage Orders prescribing the minimum wages, maximum hours, and standard
27 conditions of employment for employees in this state.
28

1 7. During the relevant time period, Defendants did not authorize and permit lawful
2 meal periods and rest breaks for Plaintiffs and Class members. This was based on policies (or
3 lack thereof) as well as their practices that applied to all Class members.

4 8. Plaintiffs and Class members were regularly not provided with all compliant
5 meal periods to which they were entitled, including for a second meal period. This includes
6 that Defendants required Plaintiffs and Class members to regularly work through meal periods.
7 This resulted in interrupted meal periods that were not sufficiently long to comply with the law
8 or a complete lack of a meal period. Defendants were well aware of this, but Plaintiffs and
9 Class members still had 30 minutes deducted from their daily time, despite the fact that they
10 were working for part of or all of their meal period and meal period premiums were not paid.
11 Based on the hours worked, the time spent working during meal periods (for which they were
12 not paid) would be overtime hours, and result in not only overtime wages owed but also
13 minimum wage and liquidated damages.

14 9. Furthermore, meal periods (including second meal periods) were regularly
15 untimely or not taken at all including because of the press of business and pressure of
16 Defendants to complete tasks. Again, compliant meal period premiums were not paid.

17 10. Additionally, Defendants' non-exempt employees were not authorized and
18 permitted lawful rest breaks as required. Plaintiffs and Class members were not permitted or
19 authorized to take these, and in fact did not take them, due to, among other things, the press of
20 business and Defendants' requirements. Defendant was aware of this but did not pay Plaintiffs
21 and Class members a compliant rest break premium.

22 11. As such, Plaintiffs and Class members were not authorized and permitted lawful
23 meal periods and rest breaks and were not provided with one hour's wages in lieu thereof in violation
24 of, among others, California Labor Code §§ 512 and 226.7 and applicable IWC Wage Orders. This
25 has also resulted in a failure to pay for all wages for hours worked during meal periods. The
26 wages include regular time wages, overtime, and minimum wages (with its resulting liquidated
27 damages)
28

1 12. Defendants' non-exempt employees were not authorized and permitted lawful meal
2 periods and rest breaks and were not provided with one hour's wages in lieu thereof, in one or more
3 of the following manners.

- 4 a. employees were regularly not authorized and permitted full and timely thirty-
5 minute meal periods for workdays in excess of five and/or ten hours and were
6 not compensated one hour's wages in lieu thereof, all in violation of, among
7 others, Labor Code §§ 226.7, 512, and applicable IWC Wage Orders;
8 b. employees were regularly not authorized and permitted full and timely ten-
9 minute rest breaks for workdays in excess of four and/or eight and/or twelve
10 hours and were not compensated one hour's wages in lieu thereof, all in
11 violation of, among others, Labor Code §§ 226.7 and applicable IWC Wage
12 Orders;
13 c. employees were required to work through their daily meal period(s) and rest
14 break(s);
15 d. employees were required to work longer than five hours before being allowed to
16 take a meal period;
17 e. employees were required to work longer than four hours before being allowed to
18 take a rest period; and
19 f. employees were severely restricted in their ability to take a meal period or rest break.
20

21 13. On information and belief, Plaintiffs allege that he and the Class members did
22 not waive meal periods during the Class period.

23 14. During the course of Plaintiffs' and Class members' employment, Defendants
24 also failed to compensate Plaintiffs and the Class members for all hours worked (including
25 minimum wage and overtime wages). This includes, as noted above, that they were required
26 to work during their meal periods, but the full thirty minutes was still deducted from their pay
27 and that not all overtime wages were paid at the correct rate as addressed below.

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1 15. Plaintiffs and Class members also received non-discretionary bonuses based on
2 meeting specific goals. Despite Plaintiffs and Class members working overtime, Defendant did
3 not properly include these amounts in calculating the regular rate of pay used to calculate
4 overtime for Plaintiffs and Class members.

5 16. Despite Plaintiffs and Class members regularly working in excess of eight hours
6 per day and/or 40 hours per week, they were not paid all wages, or wages at the proper rate, for
7 this time as required by Labor Code §§ 510 and 1194 in one or more of the following manners:

- 8 a. By failing to pay for all hours worked;
9 b. By failing to pay for all hours worked at the appropriate rate;
10 c. By deducting time for meal periods during which employees were actually
11 working;
12 d. By arbitrarily reducing hours worked;
13 e. Through failure to maintain proper records; and
14 f. Through other methods to be discovered.

15 17. Furthermore, Defendants failed to reimburse Plaintiffs and Class members for
16 reasonable business expenses. This includes refusing to pay for the use of personal cell phones
17 and electronic devices for Defendants' business including for recording their time each day.

18 18. Additionally, Defendants violated the California WARN Act ("Cal-WARN"),
19 Cal. Labor Code § 1400 *et seq.* On June 29, 2002¹ Defendants provided employees at the
20 Watsonville facility with letters stating it was shutting down this location, effective
21 immediately, and everyone was being laid off. Defendants did not give advance notice of this
22 layoff so that employees could get their lives in order.

23 19. Cal-WARN requires employers at a "covered establishment" (75 or more
24 employees) give 60 days' notice before a mass layoff (of 50 or more employees), a relocation,
25 or a cessation of doing business. Employers must give notice not only to employees, but also
26 to the relevant California government agency, the Employment Development Department. *See*
27 Cal. Labor Code § 1401(a). Employers are excused from providing notice of a mass layoff
28

1 only if there is a “physical calamity” (such as an earthquake) or “act of war.” § 1401(b). This
2 did not occur here.

3 20. If an employer fails to give notice of a mass layoff, relocation, or cessation of
4 business, its employees are entitled to recover: up to 60 days of wages (at their regular rate of
5 pay), and the value of any employment benefits that the employee would have received during
6 that time (such as payment of medical expenses under a health insurance plan, or matching
7 contributions to a 401(k) retirement plan). *See* § 1402.

8 21. Despite their legal requirements, Defendants did not provide advance notice to
9 employees at its Watsonville facility that they would be terminated on June 29, 2021. They
10 were not subject to any exception to this requirement.

11 22. The Employment Development Department also did not receive a WARN notice
12 from Defendants with the required advance notice.

13 23. On information and belief, since June 29, 2021, Defendants have not
14 compensated their terminated employees for its failure to provide the compliant notice.

15 24. Furthermore, as a result of Defendants’ illegal and unlawful conduct as set forth
16 above, Defendants have knowingly and intentionally failed to comply with the itemized wage-
17 statement provisions and have failed to pay the damages and penalties for said violations as required
18 by California law, including the failure to include gross and net wages earned, total hours worked
19 and the applicable rate of pay, meal period and rest break premiums (including at the correct rate).
20 They also failed to record hours and meal periods and maintain accurate payroll in violation of
21 California Labor Code §§ 226 and 1198, as well as the Industrial Wage Order.

22 25. Furthermore, Defendants failed to timely pay for all wages owed to Class
23 members upon termination of employment. As detailed above, Class members were not
24 provided proper meal periods and/or rest breaks and were not provided with a one hour penalty
25 in lieu thereof, and were not paid all wages owed (including at the correct rate).

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26. As a result of the above, Defendants have also engaged in unfair, fraudulent and deceptive business practices within the meaning of the Business & Professions Code §§ 17200, *et seq.*, as further detailed below.

27. Plaintiffs, on behalf of themselves and the non-exempt employees, bring this action pursuant to California Labor Code §§ 201-203, 204, 210, 218, 226, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1 1198 and 1400 et. seq., and the applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), seeking unpaid wages (including minimum and overtime wages), unpaid meal period and rest break premiums (including at the correct rate), reimbursement of business expenses, Cal-WARN damages, penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

28. Plaintiffs, on behalf of themselves and the non-exempt employees, pursuant to Business & Professions Code §§ 17200, *et seq.*, also seeks injunctive relief, and restitution, from Defendants for their failure to pay the wages and penalties as set forth above.

II. THE PARTIES

A. The Plaintiffs

29. Plaintiffs Carlos Aguilar is a current resident of Watsonville, California. He was employed by Defendants as a labor specialist/fulfillment employee from September 2020 through June 29, 2021, when the Watsonville location closed without notice in violation of Cal-WARN. He will serve as an adequate, typical and active participant and class representative for the proposed Class and/or Subclasses as defined herein.

30. Plaintiff Maria Alcazar is a current resident of Watsonville, California. She was employed by Defendants as a design employee from May 2020 through June 29, 2021, when the Watsonville location closed without notice in violation of Cal-WARN. She will serve as an adequate, typical and active participant and class representative for the proposed Class and/or Subclasses as defined herein.

31. Plaintiff Lizvette Salgado is a current resident of Watsonville, California. She was employed by Defendants as a processing employee from May 2020 to June 29, 2021, when

1 the Watsonville location closed without notice in violation of Cal-WARN. She will serve as
2 an adequate, typical and active participant and class representative for the proposed Class
3 and/or Subclasses as defined herein.

4 32. Plaintiff Elpidia Alcazar is a current resident of Watsonville, California. She
5 was employed by Defendants as a fulfillment employee from May 2020 to June 29, 2021, when
6 the Watsonville location closed without notice in violation of Cal-WARN. She will serve as
7 an adequate, typical and active participant and class representative for the proposed Class
8 and/or Subclasses as defined herein.

9 33. As detailed above, Plaintiffs were not paid for all hours worked (including at the
10 correct rate), were not provided all compliant meal periods and were not authorized and permitted
11 all and rest breaks during the Class Period. They were also not reimbursed for business expenses
12 including for use of their personal cell phones and electronic devices.

13 34. Plaintiffs reserve the right to seek leave to amend this complaint to add new
14 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
15 *American Savings and Loan Association*, 5 Cal. 3d 864, 872 (1971), and other applicable law.

16
17 **B. The Defendants**

18 35. Defendants are a floral e-commerce business that delivers flowers nationwide. .

19 36. Defendants employed Plaintiffs and other non-exempt employees in California. The
20 illegal and unlawful policies and practices described herein were performed by Defendants in
21 California.

22 37. Defendant FARMGIRL FLOWERS, INC. was and is, upon information and
23 belief, a California Corporation with the capacity to sue and to be sued, and doing business, in
24 the State of California, with a principal place of business in Alameda County. At all times
25 hereinafter mentioned, Defendant PRIMAL ELEMENTS, INC. was an employer whose
26 employees were engaged throughout this county and the State of California.

27 38. Defendant CHRISTINA STEMBEL is and was an owner, director, officer,
28 and/or managing agent of FARMGIRL FLOWERS, INC. CHRISTINA STEMBEL is believed

1 to be an “other person acting on behalf of an employer” within the meaning of Labor Code
2 §558.1 who violated or caused to be violated the same Labor Code sections at issue in this case
3 and alleged against FARMGIRL FLOWERS, INC.

4 39. The true names and capacities, whether individual, corporate, associate or
5 otherwise, of defendants DOES 1 through 50 are unknown to Plaintiffs, who therefore sues these
6 defendants by fictitious names pursuant to Code of Civil Procedure § 474. Plaintiffs further alleges
7 that each of these fictitious defendants is in some manner responsible for the acts and occurrences
8 herein set forth. Plaintiffs will amend this Complaint to show these defendants’ true names and
9 capacities when ascertained, as well as the manner in which each fictitious defendant is responsible.

10 40. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive,
11 and each of them, were residents of, doing business in, availed themselves of the jurisdiction
12 of, and/or injured Plaintiffs and aggrieved employees in the State of California.

13 41. At all times mentioned herein, each Defendant was the agent, servant, or
14 employee of the other Defendants and in acting and omitting to act as alleged herein did so
15 within the course and scope of that agency or employment.

16 **III. JURISDICTION AND VENUE**

17 42. The unlawful acts alleged herein arise under the laws of the State of California
18 and have a direct effect on Plaintiffs and other employees who work and/or performed work
19 within the State of California.

20 43. Business & Professions Code § 17204 provides that any person acting on his
21 or his own behalf may bring an action in a court of competent jurisdiction.

22 44. The Alameda County Superior Court has personal jurisdiction over Defendants
23 because: (1) they operate within this County; (2) are qualified with the California Secretary of
24 State to do business and is doing business in California, and in this County; and (3) because
25 many of the acts complained of occurred and arose in California, and specifically, this County.
26 Additionally, each is either a citizen of California, has sufficient minimum contacts in California,
27 or otherwise intentionally avails itself of the California market so as to render the exercise of
28

jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

45. Venue as to Defendants is proper in this judicial district, pursuant to Code of Civil Procedure § 395, as one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

46. California Labor Code sections 2699 et seq., the “Labor Code Private Attorneys General Act” (“PAGA”), authorizes aggrieved employees to sue directly for various civil penalties under the California Labor Code.

47. Plaintiffs timely provided notice to the California Labor Workforce Development Agency (“LWDA”) and to Defendants, pursuant to California Labor Code section 2699.3(a). Therefore, they may proceed with this action for penalties pursuant to California Labor Code § 2699, et seq.

IV. CLASS ACTION ALLEGATIONS

48. Plaintiffs are non-exempt employees who were employed by Defendants during the Class Period.

49. Plaintiffs bring this action individually, as well as on behalf of each and all other persons similarly situated in a concerted effort to improve wages and working conditions for other non-exempt and/or hourly employees, and thus seek class certification under Code of Civil Procedure § 382.

50. The proposed Class consists of and is defined as:

All individuals (a) who are currently or formerly employed by Defendants and performed work in California as non-exempt hourly employees or similar job position, job title, job code, job classification, or job description, and (b) who were subject to Defendants’ illegal policies and practices as alleged herein during the Class Period.

51. The proposed sub-classes consist of and are defined as:

UNPAID WAGE SUBCLASS: All members of the Class who Defendants failed to pay an hourly wage for each hour worked (or other required compensation) during the Class Period.

1 OVERTIME SUB-CLASS: All members of the Class who
2 were not paid overtime compensation (or not paid at the
3 applicable overtime rate) for all hours worked in excess of
4 eight hours per day and/or 40 hours per week.

5 MEAL PERIOD SUB-CLASS: All members of the Class who
6 were not authorized and permitted to take a 30-minute,
7 uninterrupted meal period for every five hours worked per day,
8 and were not compensated one hour's pay for each day on which
9 such meal period was not authorized and permitted.

10 REST BREAK SUB-CLASS: All members of the Class who were
11 not authorized and permitted to take a 10-minute, uninterrupted
12 rest break for every four hours worked per day, or major fraction
13 thereof, and were not compensated one hour's pay for each day on
14 which such rest break was not authorized and permitted.

15 BUSINESS EXPENSE SUBCLASS: All members of the Class who
16 Defendants failed to reimburse for all business expenses during the
17 Class Period.

18 CAL-WARN SUBCLASS: All members of the Class who were
19 terminated from employment at Defendants, without being provided
20 compliant 60 days' written notice of a mass layoff, relocation, or
21 termination of business.

22 WAGE STATEMENT SUBCLASS: All members of the Class that
23 Defendants did not provide accurate itemized wage statements showing
24 all hours actually worked, all wages earned, meal period and rest break
25 premiums and the applicable rates of pay during the Class Period.

26 WAITING TIME SUB-CLASS: All members of the Class who, at any
27 time after the date three years prior to the filing of this Complaint,
28 separated their employment from Defendants and were not paid wages
within the times specified by Labor Code §§ 201-203 and are owed
restitution for waiting time penalties deriving from wages.

UCL SUBCLASS: All members of the Class who, during the Class
Period, are owed restitution of unpaid wages and/or business expenses
resulting from Defendants' systematic violations of California's Labor
Code and the Wage Orders.

52. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
necessary to amend the definition of the Subclasses and reserves the right to do so. In any

1 event, Plaintiffs will formally define and designate a class definition at such time when
2 Plaintiffs seek to certify the Class or Subclasses defined herein.

3 53. At all material times, Plaintiffs were members of the Class.

4 54. There is a well-defined community of interest in the litigation and the Class is
5 readily ascertainable:

- 6 a. Numerosity: The members of the class (and each subclass, if any) are so numerous
7 that joinder of all members would be unfeasible and impractical. The membership
8 of the entire class is unknown to Plaintiffs at this time; however, the class is
9 estimated to be greater than one hundred (100) individuals and the identity of such
10 membership is readily ascertainable by inspection of Defendants' employment
11 records.
- 12 b. Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the
13 interests of each class member with whom there is a shared, well-defined
14 community of interest. Plaintiffs' claims (or defenses, if any) are typical of all Class
15 members as demonstrated herein.
- 16 c. Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the
17 interests of each Class member with whom there is a shared, well-defined
18 community of interest and typicality of claims, as demonstrated herein. Plaintiffs
19 acknowledge that Plaintiffs have an obligation to make known to the Court any
20 relationship, conflicts or differences with any Class member. Plaintiffs' attorneys,
21 the proposed Class counsel, are well versed in the rules governing class action
22 discovery, certification, and settlement.
- 23 d. Superiority: The nature of this action makes the use of class action adjudication
24 superior to other methods. A class action will achieve economies of time, effort,
25 and expense as compared with separate lawsuits, and will avoid inconsistent
26 outcomes because the same issues can be adjudicated in the same manner and at the
27 same time for the entire class.
28

1 e. Public Policy Considerations: Employers in the State of California violate
2 employment and labor laws every day. Current employees are often afraid to assert
3 their rights out of fear of direct or indirect retaliation. Former employees are fearful
4 of bringing actions because they believe their former employers might damage their
5 future endeavors through negative references and/or other means. Class actions
6 provide the Class members who are not named in the complaint with a type of
7 anonymity that allows for the vindication of their rights at the same time as their
8 privacy is protected.

9 f. Manageability of Class and Common Proof: The nature of this action and the
10 nature of laws available to Plaintiffs make use of the class action format and
11 procedure a particularly efficient and appropriate procedure to afford relief to
12 Plaintiffs and members of the Class for the wrongs alleged herein. Specifically,
13 liability will turn on Defendants' own uniform, systematic practices of failing
14 to properly pay their employees, failing to provide compliant Cal-WARN
15 notice, failing to provide lawful meal periods and authorize and permit lawful
16 rest breaks, and failing to reimburse business expenses in violation of California
17 law during the Class Period. Therefore, the wage violations are predominant
18 questions of fact that are easily capable of being determined through
19 manageable devices of common proof, such as statistical random sampling,
20 survey evidence based on scientific principles, representative testimony,
21 documentary evidence and common practices/procedures of Defendants in
22 treating each of the members of the Class as a homogeneous group. Once the
23 predominant issues of wage compliance are determined, then each of the
24 derivative subclass claims and damages suffered by each member of the Class
25 will be capable of being shown by several means of common proof and limited
26 by individual showings of entitlement to recovery that can be professionally
27 administered and tailored to the facts and circumstances of the case.
28

1 55. There are common questions of law and fact as to the Class (and each subclass, if
2 any) that predominate over questions affecting only individual members, including but not limited
3 to:

- 4 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
5 accordance with the California Labor Code, was willful;
- 6 b. Whether Defendants deprived Plaintiffs and Class members of lawful meal periods
7 or one hour of pay in lieu thereof or required Plaintiffs and Class members to work
8 during meal periods without compensation;
- 9 c. Whether Defendants deprived Plaintiffs and Class members of lawful rest breaks or
10 one hour of pay in lieu thereof;
- 11 d. Whether Defendants' conduct was willful or reckless;
- 12 e. Whether Defendants violated Labor Code §2802 by failing to reimburse
13 Plaintiffs and Class members for business expenses;
- 14 f. Whether Defendants violated Labor Code § 1400 et. seq. by failing to provide
15 compliant written notice of a mass layoff, relocation, or termination of business
16 and the resulting measure of damages/penalties owed.
- 17 g. Whether Defendants violated Labor Code § 226 by failing to timely furnish
18 Plaintiffs and Class members with accurate wage statements;
- 19 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and Class
20 members upon their discharge or resignation;
- 21 i. Whether Defendants violated Labor Code § 204/210 by failing to pay employees all
22 wages due;
- 23 j. Whether Defendants engaged in unfair business practices in violation of California
24 Business & Professions Code § 17200, et seq.;
- 25 k. Whether the members of the Class are entitled to compensatory damages, and if
26 so, the means of measuring such damages;
- 27 l. Whether the members of the Class are entitled to injunctive relief;
- 28

1 m. Whether the members of the Class are entitled to restitution; and

2 n. Whether Defendants are liable for attorneys' fees and costs to the extent
3 permitted by California law.

4 56. Class certification is appropriate under Cal. Civ. Proc. Code § 382 because
5 questions of law and fact common to the Class and Subclasses predominate over any questions
6 affecting only individual members of the Class and Subclasses of this litigation. Defendants'
7 policies and practices unlawfully treated members of the Class and Subclasses in a uniform
8 fashion. The damages suffered by individual members of the Class and Subclasses are small
9 compared to the expense and burden of individual prosecution of this litigation. In addition,
10 class certification is superior because it will obviate the need for unduly duplicative litigation
11 that might result in inconsistent judgments about Defendants' practices.

12 57. Class certification is also appropriate pursuant to Cal. Civ. Proc. Code § 382 because
13 Defendants have acted or refused to act on grounds generally applicable to the Class, making
14 appropriate declaratory relief with respect to and the Class and Subclasses as a whole.

15 58. Plaintiffs intend to send notice to all members of the Class and Subclasses to the
16 extent required by law and each will be given an opportunity to opt out of the proceedings.

17 59. Pursuant to the Private Attorneys General Act ("PAGA"), Plaintiffs have also
18 given notice to the California Labor and Workforce Development Agency ("LWDA") of the
19 Labor Code violations alleged in this Complaint. The Complaint seeks all recoverable penalties
20 for Labor Code violations as permitted and proscribed by the PAGA. This cause of action
21 includes allegations and remedies available under Labor Code §§ 2699, 2699.5, and 2933.3,
22 among others. *See* Cal. Labor Code § 2933.3(a)(2)(C) ("Notwithstanding any other provisions
23 of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action
24 arising under this part within 65 days of the time periods specified in this part.")

25 60. Defendants have willfully refused to pay Plaintiffs and the members of the Class the
26 required compensation for all hours worked (including minimum wage, overtime, and meal period
27
28

1 and rest break premiums at the correct rate, and amounts under Cal-WARN), failed to reimburse
2 for business expenses and failed to keep compliant records as required by law.

3 61. Defendants' company-wide policies and practices violate California law as pled
4 herein. Plaintiffs seek declaratory relief, wages, premium wages for meal period and rest break
5 violations, reimbursement of business expenses, damages under Cal-WARN, liquidated damages,
6 and other damages and penalties as permitted by California law, interest, and attorneys' fees and
7 costs.

8 **V. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **(Failure to Pay Wages For All Hours Worked)**

11 **(Labor Code §§ 204, 210, 218 and 1194, 1194.2)**

12 **(Brought by Plaintiffs on Behalf of Themselves And Members of The Class Against**
13 **All Defendants)**

14 62. Plaintiffs reallege and incorporate by this reference each of the preceding and
15 foregoing paragraphs as if fully set forth herein.

16 63. At all times herein relevant, Labor Code §§ 204, 218, 1194 and 1194.2, and the
17 applicable Wage Orders were in full force and effect. Labor Code § 204 requires employers to
18 pay all wages earned by any employee due and payable twice during each calendar month.

19 64. Pursuant to Labor Code § 218, Plaintiffs may bring a civil action for unpaid
20 wages due directly against the employer.

21 65. At all times herein relevant, the Wage Orders and applicable California Code of
22 Regulations have applied and continue to apply to Plaintiffs' and the Class Members'
23 employment with Defendants, which state that "every employer shall pay to each employee
24 wages. . . for all hours worked."

25 66. "Hours worked" is defined as "the time during which an employee is subject to
26 the control of an employer and includes all the time the employee is suffered or permitted to
27 work, whether or not required to do so."
28

1 67. At all times pertinent hereto, Labor Code § 1194 provided: “Notwithstanding
2 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
3 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
4 civil action the unpaid balance of the full amount of this minimum wage or overtime
5 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

6 68. At all times pertinent hereto, Labor Code § 1194.2 provides for the recovery of
7 prejudgment interest in any action brought to recover the nonpayment of wages, at the rate
8 specified in Civil Code § 3289.

9 69. Labor Codes §§ 218.5, 218.6, 1194(a) and 1194.2(a) provide that an employee
10 who has not been paid the legal wage may recover the unpaid balance and together with
11 attorney’s fees and costs of suit, as well as liquidated damages in an amount equal to the wages
12 unpaid and interest thereon.

13 70. At all relevant times herein, Defendants were required to compensate Plaintiffs
14 and the members of the Class for all hours worked pursuant to Labor Code § 1194.

15 71. By uniformly failing to track and record all of the hours worked by Plaintiffs
16 and members of the Class, requiring them to work off the clock, and deducting a full thirty
17 minutes for meal periods when a shorter time had been taken (or no meal period at all),
18 Defendants were able to skim wages from employees by not paying them a separate hourly
19 wage for each and every hour worked as required by California law. Through this unlawful
20 and illegal policy and practice, Defendants have failed to pay Plaintiffs and the Class all wages
21 owed to them.

22 72. By the course of conduct set forth above, Defendants failed to pay all wages and
23 violated the minimum wage requirements as set forth in Labor Code §§ 218 and 1194.

24 73. Plaintiffs are informed and believe and based thereupon allege that the result of
25 the unlawful and illegal policy and practice caused damage in the nonpayment of minimum and
26 regular wages to themselves and the proposed Class and/or Unpaid Wage Subclass, in an
27 amount according to proof at trial.

1 74. Plaintiffs are informed and believe that the nonpayment of wages is fixed and
2 ascertainable on a class wide basis such that prejudgment interest on those wages is
3 recoverable.

4 75. As a direct and proximate result of Defendants' unlawful conduct, as set forth
5 herein, Plaintiffs and the Class Members have sustained damages, including loss of earnings,
6 in an amount to be established at trial, plus prejudgment interest pursuant to statute.

7 76. Pursuant to Labor Code sections 1194, Plaintiffs and the proposed Class and/or
8 Unpaid Wage Subclass are entitled to, and seek to, recover unpaid minimum wage and overtime
9 compensation, and other unpaid wages, plus interest, penalties, attorneys' fees and costs, and
10 liquidated damages in an amount equal to the amount unlawfully unpaid according to Labor
11 Code § 1194.2. The specific amounts are to be determined at trial.

12 **SECOND CAUSE OF ACTION**

13 **(Failure to Pay Overtime Wages)**

14 **(Labor Code §§ 510 and 1194)**

15 **(Brought by Plaintiffs on Behalf of Themselves And Members of the Class o Against**
16 **All Defendants)**

17 77. Plaintiffs reallege and incorporate by this reference each of the preceding and
18 foregoing paragraphs as if fully set forth herein.

19 78. Plaintiffs seek to represent the proposed Class or, in the alternative, the
20 Overtime Subclass as a basis to enforce equal or greater protections for wages owed that are
21 offered by California law. Because the practices alleged herein are uniform, systematic and
22 continuous and affect each proposed member of the Class in a legally identical way, Plaintiffs,
23 at the appropriate time will move to certify the Class or Overtime Subclass to the extent
24 permitted by Cal. Civ. Proc. Code § 382.

25 79. Plaintiffs and the Class were at all times subject to California's laws and
26 regulations protecting the employees' entitlement to be paid and presumption to be paid
27 overtime wages for requisite hours worked beyond a normal workday or a normal work week,
28 as specified, without limitation, by Cal. Labor Code §§ 510, 1194 and the Wage Orders.

1 80. California law requires employers, such as Defendants, to pay overtime
2 compensation to all nonexempt employees for all hours worked over 40 hours per week or over
3 8 hours per day. Labor Code § 204 establishes the fundamental right of all employees in the
4 State of California to be paid wages, including straight time and overtime, in a timely fashion
5 for their work. This precludes any waiver for unpaid due and owing wages that remain unpaid
6 at the time of separation.

7 81. Labor Code § 510(a) states in pertinent part: “Any work in excess of eight hours
8 in one workday and any work in excess of 40 hours in any one workweek ... shall be
9 compensated at the rate of no less than one and one-half times the regular rate of pay for any
10 employee.” In addition, Labor Code § 510(a) provides that “[a]ny work in excess of 12 hours
11 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
12 employee.”

13 82. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
14 the hours set by the IWC.

15 83. As set forth above, Plaintiffs and the members of the Class were entitled to be
16 paid overtime compensation for all overtime hours worked. Plaintiffs, and members of the
17 Class, were regularly and consistently required to work overtime during the Class Period, but
18 were not paid for all overtime hours worked (including for time worked during short or missed
19 meal periods when the full 30 minutes was deducted) and were not paid at the correct overtime
20 rate of pay.

21 84. Throughout the Class Period, Plaintiffs and the members of the Class worked in
22 excess of 8 hours in a workday and/or 40 hours in a workweek.

23 85. During the Class Period, Defendants did not pay Plaintiffs and members of the
24 Class overtime pay for all overtime hours worked and Defendants did not pay Plaintiffs and
25 members of the Class at the correct overtime rate of pay.

26 86. As a direct and proximate result of Defendants’ unlawful conduct as set forth
27 herein, Plaintiffs and members of the Class have sustained damages, including loss of earnings
28 for unpaid overtime hours worked, in an amount to be established at trial, prejudgment interest,

1 and costs and attorneys' fees, pursuant to California law.

2 **THIRD CAUSE OF ACTION**

3 **(Failure to Provide Compliant Meal-and-Rest Break)**

4 **(Labor Code §§ 226.7, 512, and Industrial Wage Order)**

5 **(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All**
6 **Defendants)**

7 87. Plaintiffs reallege and incorporate by this reference each of the preceding and
8 foregoing paragraphs as if fully set forth herein.

9 88. Labor Code § 226.7(b) provides that “[a]n employer shall not require an employee
10 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
11 applicable regulation, standard, or order of the [IWC] ...”

12 89. Labor Code 512(a) provides that “[a]n employer may not employ an employee for
13 a work period of more than five hours per day without providing the employee with a meal period
14 of not less than 30 minutes, except that if the total work period per day of the employee is no more
15 than six hours, the meal period may be waived by mutual consent of both the employer and
16 employee.”

17 90. Labor Code § 512(a) further provides that “[a]n employer may not employ an
18 employee for a work period of more than 10 hours per day without providing the employee with a
19 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
20 12 hours, the second meal period may be waived by mutual consent of the employer and the
21 employee only if the first meal period was not waived.”

22 91. Labor Code § 516 provides that the IWC may adopt or amend working condition
23 orders with respect to meal periods for any workers in California consistent with the health and
24 welfare of those workers.

25 92. The Wage Order provides that “[u]nless the employee is relieved of all duty during
26 a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted
27 as time worked.” “An ‘on duty’ meal period shall be permitted only when the nature of the work
28

1 prevents an employee from being relieved of all duty and when by written agreement between the
2 parties an on-the-job paid meal period is agreed to. The written agreement shall state that the
3 employee may, in writing, revoke the agreement at any time.”

4 93. The Wage Order further provides that “[i]f an employer fails to provide an employee
5 a meal period in accordance with the applicable provisions of this order, the employer shall pay the
6 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that
7 the meal period is not provided.”

8 94. The members of the Class consistently worked over 5 hours per shift and therefore
9 were entitled to a meal period of not less than 30 minutes prior to exceeding 5 hours of work.

10 In addition, the members of the Class consistently worked over 10 hours per shift and therefore
11 were entitled to a second meal period of not less than 30 minutes prior to exceeding 10 hours of
12 work.

13 95. Throughout the Class Period, Defendants failed to consistently allow and provide
14 the meal periods required by applicable California law, including the Wage Orders. Plaintiffs and
15 the members of the Class regularly worked a full day and did not receive proper meal periods (as
16 detailed above). Instead, Plaintiffs and Class members were required and/or encouraged to shorten,
17 work through or miss their meal periods, were prevented from taking them until past the 5th hour/10th
18 hour, or had their meal periods interrupted or limited.

19 96. Defendants failed to provide Plaintiffs and the members of the Class compliant meal
20 periods as required by law or compensate them at one hour of “premium wage” at the employee’s
21 regular rate of pay for each day that a meal period was not authorized, permitted or otherwise
22 compliant with California law.

23 97. The members of the Class did not waive their meal periods by mutual consent with
24 Defendants or otherwise.

25 98. The members of the Class did not enter into any written agreement with Defendants
26 agreeing to an on-the-job paid meal period.
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1 99. Similarly, Plaintiffs and members of the Class were entitled to be authorized and
2 permitted paid, duty-free, uninterrupted 10-minute rest periods for every four hours worked (or
3 every major fraction thereof)

4 100. Plaintiffs and the members of the Class regularly worked shifts in excess of four
5 hours without being permitted the opportunity to take a paid rest period of at least ten (10)
6 consecutive minutes, uninterrupted, relieved of all job duties; worked more than six (6) hours at a
7 time without being allowed a second paid ten (10) consecutive minute, uninterrupted, rest period,
8 relieved of all job duties; worked shifts in excess of ten hours without being allowed a third paid ten
9 (10) consecutive minute, uninterrupted, rest period, relieved of all job duties.

10 101. Defendants failed to authorize and permit Plaintiffs and the members of the Class to
11 take adequate rest periods as required by law or compensate them at one hour of “premium wage”
12 at the employee’s regular rate of pay for each day that a rest period was not authorized, permitted or
13 otherwise compliant with California law.

14 102. Plaintiffs and the members of the Class are therefore entitled to payment of
15 additional wages as provided by law.

16 103. Defendants failed to comply with the required meal period and rest break laws
17 established by Labor Code §§ 226.7, 512, 516 and the Wage Orders.

18 104. Therefore, the members of the Class or, in the alternative, the Meal Period Subclass
19 and the Rest Period Subclass, were effectively deprived of their legally requisite meal-and-rest
20 periods.

21 105. Under the Wage Order– which states “[i]f an employer fails to provide an employee
22 a meal or rest ... period in accordance with a state law ..., the employer shall pay the employee one
23 additional hour of pay at the employee’s regular rate of compensation for each workday that the
24 meal or rest ... period is not provided” – the members of the Meal Period and Rest Break Subclasses
25 are entitled to damages in an amount equal to one additional hour of pay at each employee’s regular
26 rate of compensation for each work day that the meal or rest period was not provided, in a sum to
27 be proven at trial.
28

1 106. Pursuant to Labor Code § 218.6 and Civil Code § 3287, the members of the Meal
2 Period Subclass and the Rest Period Subclass seek recovery of prejudgment interest on all amounts
3 recovered herein.

4 107. Plaintiffs limit the recovery of “premium wages” to one hour of pay per day for each
5 day that a meal period was not authorized, permitted or otherwise compliant with California law,
6 and one hour of pay for each day that a rest period was not authorized, permitted or otherwise
7 compliant with California law for each employee at their respective regular rate of pay, as set forth
8 in the Division of Labor Standards Enforcement Policy Manual guidelines, for a maximum recovery
9 of two premium wage payments per employee per day.

10 **FOURTH CAUSE OF ACTION**

11 **(Failure to Reimburse for Business Expenses)**

12 **(Labor Code §2800 et. seq.)**

13 **(Brought by Plaintiffs on Behalf of Themselves And Members of the Class)**

14 108. Plaintiffs reallege and incorporate by this reference each of the preceding and
15 foregoing paragraphs as if fully set forth herein.

16 109. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct
18 consequences of the discharge of his or her duties, or of his or her obedience to the directions
19 of the employer, even though unlawful, unless the employee, at the time of obeying the
20 directions, believed them to be unlawful.”

21 110. As alleged above, Defendants failed and continue to fail to reimburse the Class
22 members for all the necessary expenditures they incurred while performing their duties
23 including, but not limited to, use of personal cell phones and electronic device for Defendants’
24 business activities. Therefore, Plaintiffs and Class members are entitled to recover from
25 Defendants the unpaid balance of these expenses, plus interest thereon.

26 111. Plaintiffs further requests an award of attorney’s fees pursuant to Labor Code
27 §218.5 and Code of Civil Procedure § 1021.5, and an award of prejudgment interest.
28

1 **FIFTH CAUSE OF ACTION**

2 **(Violation of Cal-WARN)**

3 **(Labor Code § 1400 et. seq.)**

4 **(Brought by Plaintiffs on Behalf of Themselves And Members of The Cal-WARN Sub-**
5 **Class Against All Defendants)**

6 112. Plaintiffs reallege and incorporate by this reference each of the preceding and
7 foregoing paragraphs as if fully set forth herein.

8 113. Defendants are “employers” that operate a “covered establishment” under the
9 California WARN Act, Cal. Labor Code § 1400 *et seq.*, because they run a business enterprise that
10 employs 75 or more employees.

11 114. Defendants engaged in a “mass layoff” because they terminated 50 or more
12 employees within a 30-day period.

13 115. Defendants engaged in a “relocation” by moving substantially all of their
14 operations to another facility.

15 116. Defendants engaged in a “termination” because they ceased or substantially
16 ceased commercial operations in at least their Watsonville location.

17 117. None of the exemptions to the notice requirements of the California WARN
18 Act applies.

19 118. Defendants willfully violated the California WARN Act by failing to provide
20 the required notice.

21 119. Plaintiffs and all similarly situated former employees have been damaged by
22 Defendants’ conduct constituting violations of the California WARN Act and are entitled to
23 damages for their back pay and associated benefits for each day of the violation.

24 120. Defendants have not acted in good faith nor with reasonable grounds to believe
25 its acts or omissions were not a violation of the California WARN Act.
26
27
28

(Failure to Provide Accurate Wage Statements)

(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All Defendants)

122. Defendants knowingly and intentionally failed to provide accurate, itemized wage statements including, *inter alia*, total hours worked, gross and net wages earned (including minimum wage and overtime), meal period and break premiums (including at the correct rate) in accordance with Labor Code § 226(a).

124. Labor Code § 226 (e)(1) states that “[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

Page 25

1 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
2 promptly and easily determine from the wage statement alone one or more of the following: (i) The
3 amount of the gross wages or net wages paid to the employee during the pay period or any of the
4 other information required to be provided on the itemized wage statement pursuant to items (2) to
5 (4), inclusive, (6), and (9) of subdivision (a). (ii) Which deductions the employer made from gross
6 wages to determine the net wages paid to the employee during the pay period.”

7 126. Labor Code § 226(e)(2)(C) defines “promptly and easily determine” to mean “a
8 reasonable person would be able to readily ascertain the information without reference to other
9 documents or information.”

10 127. Labor Code § 226(e)(3) states that the phrase “knowing and intentional failure”
11 “does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake.”

12 128. From the outset, Defendants have failed to comply with Labor Code § 226. As a
13 matter of common policy and practice, Defendants did not include the non-exempt hourly
14 employees’ “corresponding number of hours worked at each hourly rate by the employee.” In
15 addition, the wage statements distributed to Plaintiffs and members of the Class did not contain all
16 wages earned (including minimum wage, overtime and meal period and rest break premiums at the
17 correct rate). Defendants’ knowing, and intentional omissions caused Plaintiffs and members of the
18 Class to suffer “injury” by, among other things, impeding them from knowing the amount of wages
19 to which they are and were entitled.

20 129. At all times relevant herein, Defendants failed to maintain records of hours worked
21 by Plaintiffs and the members of the Class as required under Labor Code § 1174(d).

22 130. Plaintiffs and members of the California Class seek (i) injunctive relief requiring
23 Defendants to comply with Labor Code §§ 226(a) and 1174(d), (ii) the amounts provided under
24 Labor Code §§ 226(e) and 1174.5, including the greater of all actual damages or \$50 for the initial
25 pay period in which a violation occurs and \$100 per employee for each violation in a subsequent
26 pay period, and (iii) attorneys’ fees and costs.
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SEVENTH CAUSE OF ACTION

(Failure to Timely Pay All Wages Due Upon Separation)

(Labor Code §§ 201, 202, and 203)

(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All Defendants)

131. Plaintiffs reallege and incorporate by this reference each of the foregoing paragraphs as if fully set forth herein.

132. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within the time specified by law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of 30 days of wages.

133. All members of the Class who ceased employment with Defendants are entitled to unpaid compensation, but to date have not received such compensation.

134. More than 30 days have passed since certain members of the Class left Defendants' employ.

135. As a consequence of Defendants' willful conduct in not paying compensation for all hours worked, the members of the Class whose employment ended during the Class Period are entitled to 30 days' wages under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

(Violation of California's Unfair Competition Law)

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

(Brought by Plaintiffs on Behalf of Themselves And Members of the Class Against All Defendants)

136. Plaintiffs reallege and incorporate by this reference each of the foregoing paragraphs as if fully set forth herein.

1 137. Defendants' failure to pay all wages (including minimum wage and overtime
2 wages), failure to pay compliant premium wages for noncompliant meal periods and rest breaks,
3 failure to reimburse for business expenses and violation of Cal-WARN, constitute unlawful activity,
4 acts and practices that are prohibited by Business & Professions Code §§ 17200, *et seq.* The actions
5 of Defendants described above constitute unfair, fraudulent and deceptive business practices, within
6 the meaning of Business and Professions Code §§ 17200, *et seq.* Defendants have violated multiple
7 provisions of California law and provisions of the Wage Orders, which has the same force and effect
8 of a violation of law. This includes, without limitation, California Labor Code §§ 201-203, 204,
9 210, 218, 226, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1 1198 and 1400 *et. seq.*
10 which serve as statutory predicates for which restitution and disgorgement are owed by Defendants.

11 138. Plaintiffs and members of the UCL Subclass are entitled to an injunction, restitution,
12 and other equitable relief against such unlawful practices in order to prevent future damage, for
13 which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

14 139. As a result of these unlawful acts, Defendants have reaped and continue to reap
15 unfair benefits and illegal profits at the expense of Plaintiffs and the members of the Class that
16 Plaintiffs seeks to represent. Defendants should be enjoined from this activity and make restitution
17 for these ill-gotten gains to restore to Plaintiffs and the members of the Class the wrongfully
18 withheld wages, pursuant to Business & Professions Code § 17203, and specific performance of
19 payment of penalties ordered under Business and Professions Code § 17202.

20 140. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
21 unjustly enriched through the acts described above and that he and the Class have and continue to
22 suffer irreparable prejudice by Defendants' unfair practices. Further, by engaging in such activities,
23 Defendants are illegally operating at an advantage to other law-abiding employers in the State of
24 California and underpaying payroll and other applicable taxes that are collected by the State and
25 local governmental entities in California.

26 141. The illegal conduct alleged herein is continuing, and there is no indication that
27 Defendants will not continue such activity into the future. Plaintiffs allege that if Defendants are
28

1 not enjoined from the conduct set forth in this Complaint, it will continue to fail to pay all wages,
2 premium wages for meal-and-rest violations, to reimburse for business expenses, comply with the
3 legal requirements addressed above, and paying appropriate taxes, insurance, and unemployment
4 withholdings.

5 142. Plaintiffs will request that the Court issue a preliminary and permanent injunction
6 prohibiting Defendants from continuing to fail to fully pay all appropriate hourly and overtime rates
7 of pay, and all wages due at termination, and requiring Defendants to provide accurate hourly wage
8 statements.

9
10 **NINTH CAUSE OF ACTION**

11 **(Violation of PAGA)**

12 **(California Labor Code §§ 2698, et seq.)**

13 **(Brought by Plaintiffs on Behalf of Themselves And the Aggrieved Employees Against All**
14 **Defendants)**

15 143. Plaintiffs reallege and incorporate by this reference each of the foregoing paragraphs
16 as if fully set forth herein.

17 144. California Labor Code §§ 2698, et seq. (“PAGA”) permits Plaintiffs to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code §
19 2699.5.

20 145. At all times herein set forth, PAGA was applicable to Plaintiffs’ employment
21 by Defendants.

22 146. At all times herein set forth, PAGA provides that any provision of law under the
23 California Labor Code that provides for a civil penalty to be assessed and collected by the
24 LWDA for violations of the California Labor Code may, as an alternative, be recovered through
25 a civil action brought by an aggrieved employee on behalf of himself and other current or
26 former employees pursuant to procedures outlined in California Labor Code § 2699.3.
27
28

1 147. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
2 employee,” who is any person that was employed by the alleged violator and against whom one
3 or more of the alleged violations was committed.

4 148. Plaintiffs and other employees are Aggrieved Employees as defined by
5 California Labor Code § 2699(c) in that they are all current or former employees of Defendants
6 who are or were employed by Defendants, and one or more of the alleged violations were
7 committed against them.

8 149. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved
9 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
10 following requirements have been met:

- 11 a. The aggrieved employee shall give written notice (“Employee’s Notice”) to the
12 LWDA and by certified mail to the employer of the specific provisions of the
13 California Labor Code alleged to have been violated, including the facts and theories
14 to support the alleged violations.
15
16 b. The LWDA shall provide notice (“LWDA Notice”) to the employer and the
17 aggrieved employee by certified mail that it does not intend to investigate the alleged
18 violation within sixty (60) calendar days of the postmark date of the Employee’s
19 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
20 within sixty-five (65) calendar days of the postmark date of the Employee’s Notice,
21 the aggrieved employee may commence a civil action pursuant to California Labor
22 Code § 2699 to recover civil penalties in addition to any other penalties to which the
23 employee may be entitled.

24 150. On July 27, 2021, Plaintiff Aguilar provided written notice by certified mail to
25 the LWDA and to Defendants of the specific provisions of the California Labor Code alleged
26 to have been violated, including the facts and theories to support the alleged violations.
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28

1 151. On August 4, 2021, the other three Plaintiffs provided written notice by certified
2 mail to the LWDA and to Defendants of the specific provisions of the California Labor Code
3 alleged to have been violated, including the facts and theories to support the alleged violations.

4 152. Plaintiffs have satisfied the administrative prerequisites under California Labor
5 Code § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies,
6 for violations of California Labor Code including sections 201, 202, 203, 204, 210, 226(a),
7 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1194.2, 1197, 1198, 2802, and Industrial
8 Welfare Orders including, but not limited to, Section 7.

9 153. Defendants' conduct, as alleged herein, violates numerous sections of the
10 California Labor Code including but not limited to the following:

- 11 a. Violation of Labor Code § 226(a) and 226.3 for failing to provide accurate wage
12 statements, as herein alleged.
- 13 b. Violation of Labor Code §§ 226.7 and 512 for Defendants' failure to provide all
14 meal periods and rest breaks as required, or pay meal period and rest break
15 premium wages in lieu thereof, as herein alleged.
- 16 c. Violation of Labor Code §§ 201, 202 and 203 for failure to timely pay all wages
17 owed upon termination, as herein alleged.
- 18 d. Violation of Labor Code § § 204, 210 and 558 for failing to pay all wages owed,
19 as herein alleged.
- 20 e. Violation of Labor Code § 510 for failing to pay all overtime wages, as herein
21 alleged.
- 22 f. Violation of Labor Code § 1174 and Industrial Welfare Orders including, but
23 not limited to, Section 7, for failure to maintain records.
- 24 g. Violation of Industrial Welfare Orders regarding failure to record meal periods.
- 25 h. Violation of Labor Code §§ 1194, 1194.2, 1197 and 1197.1 for failing to pay
26 minimum wage.
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- i. Violation of Labor Code §1198 for failure to comply with standard conditions of labor.
- j. Violation of Labor Code §2802 for failure to reimburse for business expenses.
- k. Violation of Labor Code §558.1.

154. Pursuant to California Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs and all other aggrieved employees are entitled to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1194.2, 1197, 1198, 2802, and Industrial Welfare Orders including, but not limited to, Section 7.

155. Further Plaintiffs are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code § 2699 and any other applicable statute.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of himself and all members of the Class and Subclasses he seeks to represent, prays for relief as follows:

1. For an order certifying the First through Eighth causes of action and maintaining said causes of action as a class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of the members of the Class and/or Subclasses who were either employed or who performed work here in the State of California within the Class Period and that notice of the pendency of this action be provided to members of the Class;
2. Designation of Plaintiffs as the Class Representative for the Class and/or Subclasses and Plaintiffs' attorneys as Class Counsel for the Class and/or Subclasses;
3. A declaratory judgment that the practices complained of herein are unlawful under appropriate state law;
4. Appropriate equitable relief to remedy Defendants' violations of California law including, but not necessarily limited to, an order enjoining Defendants from continuing their unlawful practices;
5. For an award of unpaid wages and liquidated damages in an amount equal to the

amount unlawfully unpaid pursuant to Labor Code §§ 1194 and 1194.2 as well as Cal-WARN;

6. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
7. All appropriate California statutory penalties and civil penalties;
8. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class had non-compliant meal periods;
9. Compensation at the rate of one hour of regular pay for each instance in which a member of the Class had non-compliant rest breaks;
10. Damages for failure to reimburse for business expenses.
11. Labor Code § 203 penalties;
12. Damages and penalties pursuant to Labor Code §§ 226(a);
13. For an order that Defendants make restitution to Plaintiffs and the Class due to their unlawful business practices, including unlawfully-collected compensation pursuant to Business & Professions Code §§ 17203 and 17204;
14. Penalties, wages and attorney's fees and costs under PAGA;
15. Pre-judgment and post-judgment interest, as provided by law;
16. Such other equitable relief as the Court may deem just and proper; and
17. Attorneys' fees and costs of suit, including expert fees and fees pursuant to, among others, California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a jury trial on all causes of action and claims with respect to which he has a state and/or federal constitutional right to a jury trial.

1
2 Dated: October 12, 2021

BISNAR | CHASE LLP/ALPERS LAW GROUP

3
4 By: *Ian M. Silvers*
5 Brian D. Chase
6 Ian M. Silvers
7 Attorneys for Plaintiffs and Putative Classes
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