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Case #21CV386961
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Attorneys for Plaintiff EDY RUIZ

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

EDY RUIZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

LION FOODS LLC, a California limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 21CV386961

Assigned for All Purposes to:
Hon. Patricia M. Lucas, Dept. 3

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

JURY TRIAL DEMANDED

Action Filed: September 22, 2021
Trial Date: None set

1 Plaintiff EDY RUIZ (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Defendants LION FOODS LLC, a California limited liability company and DOES 1 through 50,
4 inclusive (collectively “Defendants”), and alleges as follows:

5 **INTRODUCTION**

6 1. This proposed class action, pursuant to California Code of Civil Procedure section
7 382, is brought by Plaintiff individually and on behalf of all current and former non-exempt
8 employees of Defendants in California during the Class Period (collectively the “Class” or “Class
9 Members”). The term Class Period is defined as four years prior to the filing of this action to the
10 date of class certification.

11 2. This proposed class action seeks, *inter alia*, unpaid wages (including minimum,
12 regular, and overtime wages), compensation for non-compliant meal periods and rest breaks,
13 waiting time penalties, itemized wage statement penalties, business expense reimbursements,
14 liquidated damages, interest, reasonable attorneys’ fees, and costs. Plaintiff’s class action is brought
15 under, *inter alia*, the California Industrial Welfare Commission (“IWC”) Wage Orders and
16 applicable provisions of the California Code of Regulations, California Business & Professions
17 Code sections 17200 *et seq.*, California Civil Code section 3289, California Code of Civil
18 Procedure section 1021.5, and California Labor Code (“Labor Code”) sections 201-204, 206, 210,
19 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
20 2800, and 2802.

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

27 4. Under the California Unfair Competition Law, Business and Professions Code
28 sections 17200 *et seq.* (“UCL”), and pursuant to the class action procedures provided for in this

1 statute, Plaintiff, on behalf of himself and the proposed Class, seeks declaratory relief, injunctive
2 relief, and restitution of all benefits Defendants have received from their employees due to their
3 unlawful business practices, including but not limited to, their failure to timely provide minimum,
4 regular, and overtime compensation due for all hours worked, failure to reimburse business
5 expenses, failure to provide compliant meal periods and rest breaks to their employees or
6 compensation in lieu thereof, and failure to provide accurate itemized wage statements.

7 **JURISDICTION AND VENUE**

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

18 6. This Court has jurisdiction over all Defendants because each Defendant is a citizen
19 of California, a corporation or association organized under the laws of the State of California, an
20 association authorized to do business in California and registered with the California Secretary of
21 State, does sufficient business in California, has sufficient minimum contacts with California,
22 and/or intentionally avails itself of the laws and markets of California through the promotion, sale,
23 marketing and distribution of its products and/or services in California to render the exercise of
24 jurisdiction by the California courts permissible.

25 7. Venue in Santa Clara County is proper under California Business & Professions
26 Code section 17203 and California Code of Civil Procedure section 395.5 because a substantial
27 part of Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County,
28 Defendants had and have ongoing projects in this County, Defendants conduct substantial business

1 in this County, Defendants' liability arose in this County, and/or Defendants reside, transact
2 business, maintain offices, and/or have an agent or agents in this County. The relief requested is
3 within the jurisdiction of this Court.

4 **PARTIES**

5 8. Plaintiff is an individual who resides in Santa Clara County, California. In or around
6 2014, Defendants hired Plaintiff as a non-exempt hourly employee. Plaintiff's job duties include,
7 *inter alia*, organizing and restocking pre-packaged food. Plaintiff worked a Defendants' worksite
8 located in Santa Clara County, California.

9 9. Plaintiff is informed, believes and thereon alleges that, at all relevant times, LION
10 FOODS LLC ("LION FOODS") was and is a California limited liability company. LION FOODS
11 is doing business as Fresco Supermarket and owns and operates supermarkets in California with
12 multiple locations throughout the state, including in Santa Clara County. Plaintiff is further
13 informed, believes and thereon alleges that, at all relevant times, LION FOODS regularly
14 conducted and conducts business within the State of California and derives substantial revenues
15 from services performed in California. In addition, Plaintiff is informed, believes and thereon
16 alleges that, at all relevant times, LION FOODS was and is an employer subject to California state
17 wage and hour laws.

18 10. Plaintiff is informed, believes and based thereon alleges that Defendants suffered
19 and permitted Plaintiff and the Class Members to work, and/or jointly exercised control over the
20 wages, hours, and/or working conditions of Plaintiff and the Class Members.

21 11. Defendants continue to employ non-exempt employees within California.

22 12. Plaintiff is unaware of the true names and capacities of those defendants identified
23 as DOES 1 through 50. Therefore, Plaintiff identifies those defendants fictitiously. Plaintiff is
24 informed, believes and thereon alleges that at all relevant times each DOE defendant was a parent,
25 sister, or related corporate entity of defendants, or an owner, employee or agent of defendants, and
26 each related entity, and was acting with the knowledge and authorization of each of the other
27 defendants. Plaintiff will seek to amend this FAC to allege the true names and capacities of each
28 DOE defendant when their names have been ascertained and identified. Plaintiff is informed,

believes and thereon alleges that each of the defendants sued as DOES 1 through 50 participated in, received the benefit of, or was in some way responsible for one or more of the wrongful acts and omissions and some portion of the damages alleged herein.

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

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

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

1 between and among Defendants.

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

4 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

5 17. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this
6 action individually and as a class action on behalf of a proposed Class defined as follows:

7 Class:

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

11 18. The Class is also comprised of the following Subclass:

12 Waiting Time Sub-Class:

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

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

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

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

28 22. Plaintiff is informed, believes, and thereon alleges that during the Class Period,

1 Defendants failed to pay Plaintiff and Class Members all minimum, regular, and overtime wages
2 for all hours worked in violation of the Labor Code and IWC Wage Orders. During the Class Period,
3 Plaintiff and Class Members worked more than eight (8) hours and/or 10 hours per workday and/or
4 over 40 hours per workweek. Defendants failed to pay Plaintiff and other Class Members for all
5 hours worked by failing to record the actual hours worked due to its defecting timekeeping system.
6 For example, Defendants use a biometric timekeeping system (e.g., facial recognition) that
7 regularly malfunctioned and prevented Plaintiff and Class Members from clocking in for work. As
8 such, Plaintiff and Class Members would begin their shifts working off-the-clock since they were
9 unable to clock in for work and would clock in at a later time (when the timekeeping system was
10 fixed after a reboot) without compensation for the time spent working before they were able to
11 clock in. Similarly, Defendants failed to accurately record meal periods due to the same
12 timekeeping malfunctions. Indeed, despite Plaintiff's complaints, Defendants failed to pay
13 adequate compensation for the time worked off-the-clock. In addition, Plaintiff and Class Members
14 waited in long lines to clock in for work and undergo security inspections without compensation
15 for the time spent subject to Defendants' control. In addition, Defendants rounded Plaintiff's and
16 the Class Members' hours worked, including meal periods, thereby depriving them of work
17 performed during meal periods. Defendants' rounding practice systematically undercompensated
18 the Class Members and favored the employer rather than the employee. Further, Defendants failed
19 to pay Class Members for time worked off-the-clock, e.g., Class Members were required to clock
20 out for meal periods and continue working off-the-clock without compensation. As such,
21 Defendants failed to pay Plaintiff and other Class Members minimum, regular, and overtime wages
22 for all hours worked, in violation of the Labor Code and applicable IWC Wage Orders.

23 23. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
24 Defendants deprived Plaintiff and Class Members of the opportunity to take all of their statutorily
25 entitled meal periods within the appropriate time intervals or provide compensation in lieu thereof
26 in violation of the Labor Code and IWC Wage Orders. During the Class period, Defendants failed
27 to provide timely off-duty 30-minute meal periods within the appropriate time intervals to Plaintiff
28 and other Class Members as required by Labor Code section 512 and section 11 of the applicable

1 Wage Order. Plaintiff and Class Members regularly worked through their meal periods, off-the-
2 clock, due to Defendants' understaffing, work demands, and quotas. In addition, Class Members
3 had their meal periods shortened, interrupted, and/or were required to work through them off-the-
4 clock due to Defendants' understaffing and work demands. Defendants also pressured Class
5 Members regularly to eat their meals while being restricted to Defendants' worksite. Due to
6 Defendants' practice of understaffing and prioritizing work demands over taking compliant breaks,
7 Plaintiff and Class Members also missed their meal periods or took them late. Defendants also
8 rounded meal periods in violation of California law. Further, Defendants failed to provide second
9 meal periods when Class Members worked over 10 hours. Despite these meal period violations and
10 Class Members' complaints, Defendants failed to compensate Plaintiff and other Class Members
11 with an additional hour of pay at their regular rate for every day in which they suffered a meal
12 period violation. Accordingly, Defendants failed to provide Plaintiff and Class Members with
13 timely, uninterrupted off-duty meal periods for at least 30 minutes when they worked more than
14 five (5) hours and/or 10 hours in a workday, and failed to compensate Plaintiff and Class Members
15 with an additional hour of pay at their regular rate of pay for every day in which they were denied
16 a compliant meal period in violation of the Labor Code and applicable IWC Wage Orders.

17 24. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
18 Defendants failed to permit Plaintiff and Class Members to take all of their statutorily entitled 10-
19 minute rest periods for every four (4) hours worked or major fraction thereof or provide
20 compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders. Specifically,
21 Defendants failed to provide rest breaks to Plaintiff and Class Members due to its practice of
22 understaffing and production demands. As such, Plaintiff and Class Members regularly missed their
23 first and second rest breaks, had them restricted to the worksite, shortened, interrupted, and/or
24 missed altogether. Defendants also failed to adopt and implement a practice of providing third rest
25 breaks when Class Members worked over 10 hours. Notwithstanding these rest break violations
26 and Plaintiff's and Class Members' complaints, Defendants failed to compensate Plaintiff and other
27 Class Members with an additional hour of pay at their regular rate for every day in which they
28 suffered a rest period violation. Accordingly, Defendants violated the Labor Code and applicable

1 IWC Wage Orders.

2 25. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
3 Defendants failed to reimburse Plaintiff and Class Members for necessary business expenses
4 incurred in the performance of their duties in violation of the Labor Code and IWC Wage Orders.
5 For example, Plaintiff and Class Members were required to purchase a hat, shirt, and apron with
6 Defendants' logo (i.e., Fresco Supermarket is displayed on the uniforms) without reimbursement
7 for the costs. In addition, Plaintiff's and Class Members' uniforms became heavily soiled and
8 therefore they were required to launder their uniforms separately from other clothing without
9 reimbursement. Accordingly, Defendants violated the Labor Code and applicable IWC Wage
10 Orders.

11 26. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
12 Defendants willfully failed to timely pay all wages due to the Waiting Time Subclass upon
13 separation of employment in violation of the Labor Code and IWC Wage Orders. Waiting Time
14 SubClass Members were not paid all wages (including minimum, regular, and overtime wages),
15 reimbursements, meal period premiums, and/or rest period premiums within the required time
16 period in violation of the Labor Code and applicable IWC Wage Orders.

17 27. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
18 Defendants failed to furnish Plaintiff and Class Members with accurate and complete wage
19 statements in violation of the Labor Code and IWC Wage Orders. Plaintiff and Class Members
20 received wage statements which did not accurately reflect the gross and net wages earned, total
21 hours worked, and all applicable rates of pay and the corresponding number of hours worked at
22 each pay rate, among other things in violation of the Labor Code and IWC Wage Orders.

23 28. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
24 described throughout this FAC were willful.

25 **NUMEROSITY**

26 29. The Class is so numerous that joinder of all of its members is impracticable. While
27 the exact number and identities of Class Members are unknown to Plaintiff at this time and can
28 only be ascertained through appropriate discovery, Plaintiff is informed, believes and thereon

1 alleges that the Class consists of more than 100 persons.

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

6 **COMMONALITY**

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

10 (a) Whether Defendants failed to pay Plaintiff and Class Members all minimum,
11 regular, and overtime wages for all hours worked by Plaintiff and Class Members;

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

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

17 (d) Whether Defendants failed to timely pay Waiting Time SubClass Members
18 all wages due either immediately upon termination or within 72 hours after resignation;

19 (e) Whether Defendants' conduct was willful;

20 (f) Whether Defendants failed to issue accurate itemized wage statements to
21 Plaintiff and Class Members;

22 (g) Whether Defendants failed to reimburse Plaintiff and Class Members for
23 necessary business expenditures;

24 (h) Whether Defendants engaged in unfair business practices in violation of
25 California Business & Professions Code sections 17200 *et seq.*; and

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

28 ///

1 **TYPICALITY**

2 32. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical
3 of the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising
4 out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same
5 course of conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the
6 claims of the Class; and the legal issues raised under California state law as a result of Defendants'
7 conduct apply equally to Plaintiff and the Class Members.

8 **ADEQUACY OF REPRESENTATION**

9 33. Plaintiff is an adequate representative of the Class, in that his claims (and defenses,
10 if any) are typical of those of the Class. Plaintiff has no conflicts of interest with his fellow Class
11 Members and will be able to fairly and adequately protect the interests of the Class. Plaintiff has
12 the same interests in the litigation of this case as the Class Members; and is committed to vigorous
13 prosecution of this case and has retained competent counsel experienced in class action and wage
14 and hour litigation of this nature.

15 **PREDOMINANCE**

16 34. Defendants have engaged in a common course of wage and hour abuse toward
17 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff and
18 Class Members predominate over any individual issues. Adjudication of these common issues in a
19 single action has important and desirable advantages of judicial economy.

20 **SUPERIORITY OF CLASS ACTION**

21 35. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy because individual litigation of the claims of all Class Members is
23 impracticable. Even if every Class Member could afford individual litigation, the court system
24 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
25 cases would proceed. Individualized litigation would also present the potential for varying,
26 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
27 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
28 individual actions by Class Members may establish inconsistent standards of conduct for

1 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
2 the issues presented herein, presents fewer management difficulties, conserves the resources of the
3 parties and the court system, and protects the rights of each Class Member.

4 36. Defendants have acted or refused to act in respects generally applicable to the Class,
5 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
6 herein.

7 **PUBLIC POLICY CONSIDERATIONS**

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

14 **FIRST CAUSE OF ACTION**

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

16 **(Against All Defendants)**

17 38. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
18 fully set forth herein.

19 39. At all relevant times, Defendants had a duty to comply with Labor Code sections
20 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC Wage Orders and
21 California Code of Regulations.

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

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

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

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

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

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

20 46. Labor Code section 1198 prohibits employers from employing for longer hours or
21 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
22 set by the Labor Commissioner.

23 47. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
24 Plaintiff and Class Members regularly worked over eight (8) hours and/or 10 hours per workday
25 and/or over 40 hours per workweek.

26 48. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
27 Defendants failed to pay Plaintiff and Class Members all wages for hours worked (including
28 minimum, regular, and overtime wages) by failing to record the actual hours worked, requiring off-

1 the-clock work without compensation including during meal periods, time spent waiting in line and
2 during security checks, and rounding time worked to Defendants' benefit, among other things.

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

7 50. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
8 as described herein and below.

9 **SECOND CAUSE OF ACTION**

10 **(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU**

11 **THEREOF)**

12 **(Against All Defendants)**

13 51. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
14 fully set forth herein.

15 52. At all relevant times, Defendants had a duty to comply with Labor Code sections
16 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

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

26 54. Section 11 of the applicable IWC Wage Orders state that "[u]nless the employee is
27 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
28 duty' meal period and counted as time worked."

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

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

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

58. Plaintiff is informed, believes, and thereon alleges that Class Members did not voluntarily waive their meal periods.

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

60. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

THIRD CAUSE OF ACTION

(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU THEREOF)

(Against All Defendants)

61. Plaintiff incorporates by reference all previous paragraphs of this FAC as though

1 fully set forth herein.

2 62. At all relevant times, Defendants had a duty to comply with Labor Code section
3 226.7 and the applicable IWC Wage Orders and California Code of Regulations.

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

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

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

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

17 65. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
18 Plaintiff and Class Members worked in excess of three-and-a-half (3.5) hours, six (6) hours, and/or
19 10 hours per workday.

20 66. During the Class Period, Plaintiff and Class Members did not receive compliant 10-
21 minute rest periods for every four hours worked or major fraction thereof because rest breaks were
22 missed, interrupted, shortened, and/or not free of all duties.

23 67. During the Class Period, Defendants failed to pay Plaintiff and Class Members rest
24 period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
25 applicable IWC Wage Order.

26 68. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
27 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
28 of earnings, in an amount to be established at trial plus prejudgment interest pursuant to statute. To

1 the extent such unpaid premiums or rest period violations are deemed unpaid wages, Plaintiff will
2 also seek attorneys' fees and costs pursuant to statute.

3 69. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
4 as described herein and below.

5 **FOURTH CAUSE OF ACTION**

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

7 **(Against All Defendants)**

8 70. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
9 fully set forth herein.

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

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

20 73. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of
21 a knowing and intentional failure by an employer to provide an accurate itemized wage statement
22 to recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each
23 violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee,
24 in addition to an award of costs and attorneys' fees.

25 74. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
26 showing, among other things, when the employee begins and ends each work period, meal periods
27 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
28 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff

1 and Class Members. Plaintiff is informed, believes, and thereon alleges that Defendants have
2 knowingly and intentionally failed to comply with the IWC Wage Orders.

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

15 76. Defendants knowingly and intentionally failed to provide accurate, itemized wage
16 statements to Plaintiff and Class Members, and as such Plaintiff and Class Members are deemed to
17 have suffered injury in accordance with Labor Code section 226. Plaintiff and the Class are
18 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

19 77. Plaintiff and Class Members are also entitled to injunctive relief under Labor Code
20 section 226(h), compelling Defendants to comply with Labor Code section 226, and seek the
21 recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

22 78. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
23 as described herein and below.

24 **FIFTH CAUSE OF ACTION**

25 **(WAITING TIME PENALTIES)**

26 **(Against All Defendants)**

27 79. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
28 fully set forth herein.

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

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

7 82. Labor Code section 202 requires that if “an employee not having a written contract
8 for a definite period” quits, the employee’s wages shall become due and payable no later than
9 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention
10 to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

16 84. Plaintiff is informed, believes, and thereon alleges, that at all relevant times,
17 Defendants willfully failed to timely pay Waiting Time SubClass Members all of their unpaid
18 wages earned, including, but not limited to, minimum, regular, and overtime wages, compensation
19 for non-compliant meal periods and rest periods, and unpaid reimbursements upon separation of
20 employment. Waiting Time SubClass Members are entitled to timely compensation upon
21 separation of their employment for any outstanding unpaid wages, reimbursements, and premiums
22 but to date have not received such compensation from Defendants, therefore entitling them to
23 penalties pursuant to Labor Code section 203.

24 85. As a consequence of Defendants’ willful conduct in failing to pay all earned wages,
25 Waiting Time SubClass Members are entitled to up to 30 days’ wages as a penalty for Defendants’
26 failure to timely pay wages upon separation of employment, in addition to prejudgment interest,
27 attorneys’ fees, and costs in amounts that will be established at trial.

28 86. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief

as described herein and below.

SIXTH CAUSE OF ACTION

(FAILURE TO REIMBURSE BUSINESS EXPENSES)

(Against All Defendants)

87. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

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

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

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

91. During the Class Period, Plaintiff and Class Members purchased and separately washed and maintained their heavily soiled uniforms without reimbursement.

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

93. As a consequence of Defendants' willful conduct, Plaintiff and Class Members have sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be

1 established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

2 94. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
3 as described herein and below.

4 **SEVENTH CAUSE OF ACTION**
5 **(UNFAIR BUSINESS PRACTICES)**
6 **(Against All Defendants)**

7 95. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
8 fully set forth herein.

9 96. California Business & Professions Code Section 17200, *et seq.* prohibits unfair
10 competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

11 97. Defendants' conduct, as alleged herein, has been and continues to be unfair,
12 unlawful and harmful to Plaintiff, Class Members, and Defendants' competitors. Plaintiff seeks to
13 enforce important rights affecting the public interest within the meaning of California Code of Civil
14 Procedure section 1021.5.

15 98. Defendants' activities, as alleged herein, violate California law and constitute
16 unlawful business acts or practices in violation of California Business and Professions Code
17 sections 17200, *et seq.*

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

20 100. Plaintiff brings this action on behalf of himself and all members of the general
21 public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below
22 constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of
23 the UCL. Defendants' policies and practices have violated state law in at least the following
24 respects:

25 (a) Failing to pay all minimum, regular, and overtime wages due to Plaintiff and
26 Class Members in violation of Labor Code sections 204, 206, 510, 1182.12, 1194, 1194.2, 1197,
27 and 1198;

28 (b) Failing to provide compliant meal periods or compensation in lieu thereof in

violation of Labor Code sections 226.7 and 512;

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

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

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

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

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

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

102. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking statutory and injunctive relief to stop the misconduct of Defendants, as complained herein, and to compel restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and premiums, etc.) obtained by Defendants through the unfair and unlawful business practices described herein pursuant to, *inter alia*, Business and Professions Code sections 17202, 17203, and 17208. Under the circumstances alleged, it would be inequitable and result in a miscarriage of justice for Defendants to continue to retain the property of Plaintiff and Class Members.

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

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

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

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

107. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(Against All Defendants)

108. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

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

110. On September 21, 2021, Plaintiff gave written notice of the specified provisions alleged to have been violated by Defendants, including the facts and theories to support the alleged

1 violations, as required by Labor Code section 2699.3. This written notice was provided via certified
2 mail to Defendants and to the LWDA by electronically filing the notice via the Department of
3 Industrial Relations' website. More than 65 days has passed since Plaintiff submitted his PAGA
4 notice to the LWDA without a response from the LWDA. Accordingly, Plaintiff may amend his
5 Complaint to add a PAGA cause of action against Defendants.

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

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

17 113. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil
18 penalties for any alleged violation of the following provisions: subdivision (k) of Section 96,
19 Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
20 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223,
21 and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections
22 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section
23 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of
24 Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603,
25 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026,
26 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197,
27 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292,
28 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5,

1 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55,
2 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,
3 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and
4 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
5 subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

6 114. Defendants' conduct violates numerous Labor Code sections, including, but not
7 limited to, the following:

8 115. Violation of Labor Code sections 201-204, 206, 210, 510, 558, 1194, 1197, 1197.1,
9 and 1198 for failure to timely pay all earned wages (including minimum, regular, and overtime
10 wages) owed to Plaintiff and other aggrieved employees during employment and upon separation
11 of employment as herein alleged;

12 116. Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods
13 to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal
14 periods as herein alleged;

15 117. Violation of Labor Code section 226.7 for failure to permit rest breaks to Plaintiff
16 and other aggrieved employees and failure to pay premium wages for missed rest periods as herein
17 alleged;

18 118. Violation of Labor Code sections 226 and 226.3 for failure to provide accurate
19 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

20 119. Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate
21 records regarding the employment of Plaintiff and other aggrieved employees as herein alleged;
22 and

23 120. Violation of Labor Code section 2800 and 2802 for failure to reimburse Plaintiff
24 and other aggrieved employees for necessary business expenses.

25 121. Labor Code Section 226.3 provides: "[a]ny employer who violates subdivision (a)
26 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
27 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
28 each violation in a subsequent citation, for which the employer fails to provide the employee a

1 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
2 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

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

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

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

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

27 126. As set forth above, Defendants have violated numerous provisions of the Labor
28 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff

1 also seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 for himself, the
2 underpaid employees, and the State of California.

3 127. Plaintiff is an “aggrieved employee” because he was employed by the alleged
4 violators and had one or more of the alleged violations committed against him, and therefore is
5 properly suited to represent the interests of all other aggrieved employees.

6 128. Plaintiff has exhausted the procedural requirements under Labor Code section
7 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself
8 and all other aggrieved employees under the PAGA.

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

12 130. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
13 herein.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff, on behalf of himself, the proposed Class, other aggrieved
16 employees, and the State of California, prays for judgment and the following specific relief against
17 Defendants, jointly and severally, as follows:

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

20 2. That Plaintiff be appointed as the Class Representative;

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

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

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

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

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

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

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

4 10. For attorney's fees, costs of suit, including expert fees, and interest pursuant to
5 Labor Code sections 218.6, 226, 1194, 2698 *et seq.*, 2802 and California Code of Civil Procedure
6 section 1021.5;

7 11. For restitution to Plaintiff and Class Members of all money and property unlawfully
8 acquired by Defendants through unfair or unlawful business practices pursuant to Business and
9 Professions Code sections 17200 *et seq.*;

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

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

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

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

18 16. For post judgment interest on all amounts awarded to Plaintiff and Class Members
19 as provided by law;

20 17. For PAGA penalties;

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

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

Dated: November 29, 2021

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



By:

Jose R. Garay
Daniel J. Hyun
Shelly D. Song
Attorneys for Plaintiff EDY RUIZ

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: November 29, 2021

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



By:

Jose R. Garay
Daniel J. Hyun
Shelly D. Song
Attorneys for Plaintiff EDY RUIZ