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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 JUAN CARLOS CORRAL, individually and on
 12 behalf of all similarly situated and/or aggrieved
 employees of Defendants in the State of
 California,

13 Plaintiff,

14 v.

15 STAPLES THE OFFICE SUPERSTORE LLC,
 16 a limited liability company authorized to do
 business in the state of California, and DOES 1
 17 through 50 inclusive,

18 Defendants.

Case No.: 21STCV41815

CLASS ACTION COMPLAINT

[Cal. Code Civ. Proc. § 382]

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Maintain Accurate Records;
4. Violation of Business & Professions Code § 17200, *et seq.*

REPRESENTATIVE ACTION

[Labor Code § 2698, *et seq.*]

5. Representative Claims Under the Labor Code Private Attorneys General Act

-JURY TRIAL DEMANDED-

21 Plaintiff JUAN CARLOS CORRAL ("Plaintiff") brings this class and representative action on
 22 behalf of himself, and all other similarly situated and aggrieved employees of Staples The Office
 23 Superstore, LLC, and DOES 1 through 50, inclusive (collectively, "Defendants"), allege as follows:

24 **I. INTRODUCTION**

25 1. Plaintiff brings this putative class action against Defendants, STAPLES THE OFFICE
 26 SUPERSTORE, LLC, and DOES 1 through 50, for engaging in a pattern of wage and hour violations
 27 under the California Labor Code and the Industrial Welfare Commission ("IWC") Wage Orders.

28 2. Plaintiff brings this action on behalf of all current and former similarly situated employees

1 of Defendants in the State of California during the applicable relevant time period (hereinafter “similarly
2 situated employees”).

3 3. Plaintiff brings this representative action pursuant to the Private Attorneys General Act of
4 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of himself and other current and former
5 non-exempt employees of Defendants for engaging in a pattern and practice of wage and hour violations
6 under the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7
7 (hereinafter “aggrieved employees”).

8 4. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their
9 employment-related costs by systematically violating California wage and hour laws and engaging in
10 unlawful and unfair business practices.

11 5. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward
12 Plaintiff and other similarly situated employees in California include, but are not limited to:

- 13 a. Failure to provide an off-duty meal periods of at least 30-minutes before the
14 commencement of the fifth hour of work; and
15 b. Failure to authorize and permit off-duty paid rest periods for each four hours of work
16 or major fraction thereof.

17 6. Plaintiff brings this lawsuit against Defendants seeking damages, restitution, declaratory
18 judgment, injunctive relief, statutory and civil penalties, and monetary relief on behalf of himself and all
19 other similarly situated and aggrieved employees of Defendants in California. Plaintiff seeks to recover,
20 *inter alia*, unpaid wages and premiums, interest, attorney’s fees, damages, statutory and civil penalties,
21 and costs pursuant to Labor Code §§ 226.7, 512, 558, 558.1, 1174, 1174.5, 1198, the PAGA, California
22 Business and Professions Code § 17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

23 7. Plaintiff reserves the right to name additional representatives.

24 **II. PARTIES**

25 **A. Plaintiff**

26 8. Plaintiff is a former employee of Defendants, who, at all relevant times, was employed by
27 and worked for Defendants in non-exempt position in Los Angeles County.

28 9. Plaintiff is a resident of the State of California and currently resides in Los Angeles County.

10. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2699(c) because he was employed by Defendants and suffered one or more of the violations committed by Defendants.

11. At all relevant times, Plaintiff and other similarly situated and aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

B. Defendant

12. Defendant Staples The Office Superstore LLC is a publicly traded corporation with its principal executive office in the State of Massachusetts. It operates an office supplies sales company and is primarily involved in the sale of office supplies and other related products.

13. Defendants’ wrongful conduct, as alleged herein, occurred in the County of Los Angeles as well as other counties throughout the State of California.

14. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether named or fictitious, is and, at all relevant times, was authorized to do business and did business in the State of California and were Plaintiff’s and other similarly situated and aggrieved employees’ “employer” as defined in and subject to the California Labor Code and the applicable IWC Wage Order.

15. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious Defendants participated in the acts alleged in this Complaint.

16. Plaintiff and all other similarly situated and aggrieved employees are, and at all relevant times were, non-exempt employees of each Defendant, including DOES 1 through 50, within the meanings set forth in the California Labor Code and applicable IWC Wage Order.

17. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of each other Defendant.

1 18. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
2 or fictitious, exercised control over Plaintiff and other similarly situated and aggrieved employees' wages,
3 hours and/or working conditions.

4 19. Plaintiff is further informed and believes that at all relevant times, each Defendant, whether
5 named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan
6 or policy, and the acts of each Defendant are legally attributable to the other Defendants.

7 20. Each Defendant, whether named or fictitious, was the alter ego of each of the other
8 Defendants at all relevant times herein.

9 21. A unity of interest and ownership between each Defendant, whether named or fictitious,
10 exists such that all Defendants acted as a single employer of Plaintiff and all other similarly situated and
11 aggrieved employees.

12 22. Each Defendant, whether named or fictitious, were Plaintiff's employers or persons acting
13 on behalf of Plaintiff's employer, within the meaning of California Labor Code § 558, who violated or
14 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
15 regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are
16 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant
17 times.

18 23. Each Defendant, whether named or fictitious, were Plaintiff's employers or persons acting
19 on behalf of Plaintiff's employer, within the meaning of California Labor Code § 558, who violated or
20 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
21 regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are
22 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant
23 times.

24 24. Each Defendant, whether named or fictitious, were Plaintiff's employer or other person
25 acting on behalf of Plaintiff's employer, who violated, or caused to be violated, any provision regulating
26 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violated,
27 or caused to be violated, Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, and may therefore be
28 held liable as the employer for such violations under Labor Code § 558.1.

1 **III. JURISDICTION AND VENUE**

2 25. This Court has personal jurisdiction over Defendants because Defendants conduct business
3 in the state of California and have caused injuries in the county of Los Angeles, as well as throughout the
4 state of California, through their acts, omissions, and violations of the Labor Code and Business &
5 Professions Code.

6 26. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure §§ 395(a) and
7 395.5 because Defendants transact substantial business in Los Angeles County, and Defendants employed
8 Plaintiff and other similarly situated employees in Los Angeles County. The unlawful acts alleged herein
9 that arose in Los Angeles County have a direct effect on Plaintiff and other similarly situated employees
10 within Los Angeles County.

11 **IV. GENERAL ALLEGATIONS**

12 27. Plaintiff is a former employee of Defendants who worked from approximately March 2006
13 to March 24, 2021, and whose most-recent position was Operations Supervisor. At all times, Plaintiff was
14 a non-exempt employee and was compensated on an hourly basis. Plaintiff typically worked from 1:30
15 PM to 9:30 PM, and he often worked overtime.

16 28. Defendants denied Plaintiff and other similarly situated and aggrieved current and former
17 non-exempt employees certain rights afforded to them under the California Labor Code and IWC Wage
18 Order. Specifically, Defendants failed to provide Plaintiff and similarly situated and aggrieved employees
19 compliant meal and rest periods due and owing by the times set forth by law.

20 29. Plaintiff and other similarly situated and aggrieved employees of Defendants did not sign
21 a valid on-duty meal period agreements at any point during their employment with Defendants, nor did
22 they properly waive any of their meal periods.

23 30. Defendants had a pattern and practice of not providing Plaintiff and other similarly situated
24 and aggrieved employees with legally compliant meal periods, or pay meal break premiums, even though
25 Plaintiff and other similarly situated and aggrieved employees worked more than five (5) hours during
26 their workday.

27 31. As a direct result of Defendants' policies and procedures, Plaintiff and other similarly
28 situated and aggrieved employees of Defendants were regularly required to regularly work through their

1 meal breaks, receive less than 30-minute meal periods, take interrupted meal breaks, and did not allow
2 them to take meal periods before the fifth hour of work. For example, Plaintiff and other similarly situated
3 and aggrieved employees of Defendants were not allowed to leave the job site when they were assigned
4 to work as the manager on duty. When Plaintiff and other similarly situated and aggrieved employees
5 were the manager on duty, they were responsible to responding to customer and associate needs at all
6 times. Plaintiff and other similarly situated and aggrieved employees were often the only manager on duty
7 during a particular shift. As a result, Plaintiff's and other similarly situated and aggrieved employees'
8 meal breaks were on duty and frequently interrupted.

9 32. Therefore, as a result of Defendants' illegal practices, Plaintiff and other similarly situated
10 and aggrieved employees were denied the opportunity to take legally compliant 30-minute meal periods
11 commencing before the end of the fifth hour of work in violation of Labor Code Sec. 512 and the
12 applicable Wage Order.

13 33. For the same reasons that Defendants did not provide off duty meal periods, Defendants
14 similarly did not authorize or permit Plaintiff and other similarly situated and aggrieved employees to take
15 legally compliant rest periods of at least 10 minutes for every four hours worked, or major fraction thereof.
16 Plaintiff and other similarly situated and aggrieved employees of Defendants were not allowed to leave
17 Defendant's work site for rest periods when they were assigned to work as the manager on duty and were
18 responsible to responding to customer and associate needs at all times, including rest periods. As a result,
19 Plaintiff's and other similarly situated and aggrieved employees' rest period were on duty and frequently
20 interrupted.

21 34. Although Plaintiff's and other similarly situated and aggrieved employees' meal and rest
22 periods were regularly missed, late, short, or on-duty, Defendants did not compensate Plaintiff and other
23 similarly situated and aggrieved employees an additional hour of pay at their regular rate of compensation
24 for the times they were not authorized or permitted to take a compliant and/or timely meal or rest period,
25 in violation of Labor Code § 226.7.

26 35. Further, Defendants paid Plaintiff and other similarly situated and aggrieved employees
27 nondiscretionary compensation, which included nondiscretionary bonuses. Defendants, however, failed
28 to include all of the nondiscretionary compensation, such as the nondiscretionary bonuses, when

determining the correct regular rate of compensation for purposes of determining and payment meal and rest period premium wages. As a result, Defendants failed to pay Plaintiff and other similarly situated and aggrieved employees meal and rest period premiums at the correct regular rate of compensation as required under *Ferra v. Loews Hollywood Hotel, LLC* (Cal. Supreme Court, 2021).

36. As a direct consequence of Defendants' illegal policies and procedures described herein, Defendants failed to maintain accurate records reflecting all of Plaintiff's and other similarly situated and aggrieved employees' time worked and wages earned, in violation of California law. Defendants failed to keep accurate records of Plaintiff's and other similarly situated and aggrieved employees' hours worked when Defendants failed to record the proper beginning and ending of each work and meal period, in addition to the total hours worked during the pay period, among others.

37. Based on the foregoing violations of the Labor Code and IWC Wage Order, Defendants engaged in unfair business practices in California and willingly and knowingly engaged in employment patterns and practices that violated Business & Professions Code § 17200 *et seq.*, and Plaintiff and other similarly situated and aggrieved employees suffered damages due to Defendants' unfair, unlawful and/or fraudulent actions.

V. CLASS ACTION DESIGNATION

38. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

39. Plaintiff brings Causes of Action One through four as a Class Action pursuant to California Code of Civil Procedure § 382 on behalf of himself and all current and former employees of Defendants in California and who worked as a non-exempt employee and who were affected by Defendants' Labor Code, Business and Professions Code, and IWC Wage Order violations, as alleged herein.

40. Plaintiff seeks to represent the following Class, which is defined as:

MOD Class

"All current and former non-exempt employees of Defendants who were assigned to work for Defendants for one or more shifts as manager on duty in the State of California anytime from four years preceding the filing of the complaint through the present."

41. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiff reserves

1 the right to amend or modify the class definitions with greater specificity, by further division into
2 subclasses, and/or limitation to particular issues.

3 42. Causes of Action One through four are appropriately suited for a class action pursuant to
4 §382 of the Code of Civil Procedure because the following requirements are met:

5 **A. Numerosity**

6 43. The members of the Class are sufficiently numerous to render the joinder of all their
7 members impracticable. While Plaintiff has not yet determined the precise number of members of the
8 Class, Plaintiff is informed and believes that the Class likely consist of over 100 individuals. Although
9 the exact number is currently unknown to Plaintiff, this information is easily ascertainable from
10 Defendants' time and payroll records and other personnel records.

11 **B. Commonality and Predominance**

12 44. Common questions of law and fact exists as to all class members and predominate over
13 any questions affecting only individual members of the Class. The common questions of law and fact that
14 predominate include, but are not limited to:

- 15 a. Whether Defendants failed to provide Class members with a first off-duty 30-
16 minute meal period before the end of the fifth hour of work;
- 17 b. Whether Defendants failed to authorize and permit Class members to take off-duty
18 rest periods of at least 10 minutes for every four hours worked, or major fraction
19 thereof; and
- 20 c. Whether Defendants failed to pay one additional hour of pay at the employees'
21 regular rate of compensation to Class members when they were not provided with
22 compliant and timely meal and rest periods.

23 **C. Typicality**

24 45. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all
25 class members' claims arise from the same event, practice and/or course of conduct of Defendants.
26 Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies,
27 practices and/or common course of conduct in violation of California wage and hour laws and/or illegal,
28 unfair, or fraudulent business practices.

46. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order are typical of the Class because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all class members are the same.

D. Adequacy of Representation

47. Plaintiff has no fundamental conflict of interest with the Class he seeks to represent. Plaintiff will adequately protect the interests of all class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to them and putative class members.

48. Plaintiff retained attorneys who are experienced employment law litigators with significant wage and hour and class action experience.

E. Superiority of Class Action

49. Plaintiff believes a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable. Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

50. Plaintiff knows of no difficulty that might be encountered in the management of this suit, which would preclude maintenance as a class action.

THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT

REPRESENTATIVE ACTION DESIGNATION

51. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

52. This action is properly suited for a PAGA representative action because:

a. Pursuant to California Labor Code § 2699(a), any provision of the Labor Code "that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on

1 behalf of himself or herself and other current or former employees pursuant to the procedures specified in
2 § 2699.3.”

3 b. This action involves allegations of violations of provisions of the California Labor
4 Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any
5 departments, divisions, commissions, boards, agencies or employees;

6 c. Plaintiff is an “aggrieved employee” because he was employed by the alleged
7 violators and had one or more of the alleged violations committed against him;

8 d. On September 8, 2021, Plaintiff satisfied the procedural requirements of § 2699.3
9 by serving the LWDA, via the online LWDA filing system, and Defendant STAPLES THE OFFICE
10 SUPERSTORE, LLC, via Certified Mail, with his notice for wage and hour violations and penalties,
11 including the facts and theories to support each violation.

12 e. More than 65 days passed after Plaintiff served notice via Certified Mail to the
13 LWDA and the LWDA did not provide any notice of its intent to investigate the claims alleged. Therefore,
14 Plaintiff satisfied all the administrative requirements to pursue civil penalties against Defendants pursuant
15 to Labor Code § 2698, *et seq.*

16 f. Defendants were Plaintiff’s employers or persons acting on behalf of Plaintiff’s
17 employer within the meaning of California Labor Code § 558, who violated or caused to be violated, a
18 section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of
19 work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for
20 each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

21 g. Plaintiff seeks to recover all applicable civil penalties under PAGA on behalf of
22 himself and all other aggrieved employees of Defendant in California.

23 **VI. CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PROVIDE MEAL PERIODS**

26 (Violation of Labor Code §§ 226.7, 512, and 1198 and the “Meal Periods” section of the

27 Applicable IWC Wage Order)

28 (Alleged By Plaintiff Individually and On Behalf of the MOD Class Against All Defendants)

1 53. Plaintiff re-alleges and incorporates by reference the allegations contained in the
2 paragraphs above, as though fully set forth herein.

3 54. Labor Code § 512(a) provides, in part, that employers, including Defendants, “may not
4 employ an employee for a work period of more than five hours per day without providing an employee
5 with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of
6 more than 10 hours per day without providing the employee with a second meal period of not less than 30
7 minutes.”

8 55. Labor Code § 226.7 requires that employers, including Defendants, provide their
9 employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare
10 Commission, and prohibits employers from requiring any employee “to work during any meal ... period
11 mandated by an applicable order of the Industrial Welfare Commission.” Labor Code § 226.7(c) states,
12 “[i]f an employer fails to provide an employee a meal ... period in accordance with a state law... the
13 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
14 compensation for each workday that the meal ... period is not provided.”

15 56. Labor Code § 1198 states that the “maximum hours of work and standard conditions of
16 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
17 for employees. The employment of any employee for longer hours than those fixed by the order or under
18 conditions of labor prohibited by the order is unlawful.”

19 57. The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall
20 employ any person for a work period of more than five (5) hours without a meal period of not less than
21 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
22 the meal period may be waived by mutual consent of employer and employee.”

23 58. The “Meal Periods” section of the applicable IWC Wage Order further states, “[u]nless the
24 employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
25 ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only
26 when the nature of the work prevents an employee from being relieved of all duty and when by written
27 agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state
28 that the employee may, in writing, revoke the agreement at any time.”

59. The “Meal Periods” section of the applicable IWC Wage Order also states, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

60. Plaintiff and the MOD Class were subject to the same policies, practices, and procedures governing the provision and scheduling of work periods and meal periods.

61. Defendants had a pattern and practice of not providing Plaintiff and the MOD Class with legally compliant 30-minute off-duty meal periods during their shifts, even though they worked more than six (6) hours during their workday.

62. Plaintiff and the MOD Class did not sign a valid on-duty meal period agreement at any point during their employment with Defendants.

63. Plaintiff and the MOD Class typically worked more than six hours per day and did not properly waive any of their meal periods.

64. Plaintiff and the MOD Class were unable to take compliant meal periods because they were regularly required to continue working through their meal periods, receive less than 30-minute meal periods, take on-duty or interrupted meal periods, and were not allowed to take meal periods before the end of their fifth hour of work.

65. Although the nature of Plaintiff’s and the MOD Class members’ work did not require them to take on-duty meal periods, Defendants’ work requirements made it so that they were not relieved of all duties.

66. Therefore, as a result of Defendants’ conduct, including the conduct alleged herein, Defendants violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order when Defendants failed to provide Plaintiff and the MOD Class members a 30-minute, duty-free meal period before the commencement of their sixth hour of work.

67. Consequently, pursuant to Labor Code § 226.7(b) and the “Meal Periods” section of the Wage Order, Defendants were required to pay Plaintiff and the MOD Class one additional hour of pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the MOD Class with a 30-minute, duty-free meal period before the commencement of their fifth hour of work.

68. Despite this obligation, Defendants did not always pay Plaintiff and the MOD Class one additional hour of pay at each employee's regular rate of compensation for each day that Defendants did not provide Plaintiff MOD Class with a 30-minute, duty-free meal period before the commencement of their fifth hour of work.

69. Instead, Defendants have a common policy and practice of failing to compensate Plaintiff and the MOD Class with an hour of pay at their regular rate of pay for the times that Defendants did not provide Plaintiff and the MOD Class with a 30-minute, duty-free meal period before the commencement of their fifth hour of work, as required by Labor Code § 226.7(b) and the IWC Wage Order.

70. Thus, Defendants intentionally refused to perform their obligations to provide meal periods and further failed to compensate Plaintiff and the MOD Class with all owed meal premium wages as set forth by Labor Code § 226.7(b) and the IWC Wage Order.

71. Plaintiff and the MOD Class suffered and continue to suffer losses related to Defendants' failure to pay an additional hour of pay for each day a legally compliant meal period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

72. Plaintiff seeks all available remedies for Defendants' violations, including, but not limited to, all wages due, monies, and interest to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7 and 1198 and the "Rest Periods" section
of the Applicable IWC Wage Order)

(Alleged By Plaintiff Individually and On Behalf of the MOD Class Against All Defendants)

73. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

74. Labor Code § 226.7 requires employers, including Defendants, to provide to their employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

75. Labor Code § 1198 states that the "maximum hours of work and standard conditions of

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

4 76. The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer
5 shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the
6 middle of each work period. The authorized rest period time shall be based on the total hours worked daily
7 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore,
8 “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions
9 of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
10 compensation for each workday that the rest period is not provided.”

11 77. Plaintiff and the MOD Class were subject to the same policies, practices, and procedures
12 governing the provision and scheduling of rest periods.

13 78. Defendants did not authorize and permit Plaintiff and the MOD Class members from taking
14 legally compliant rest periods every four hours worked or major fraction thereof. Plaintiff and the MOD
15 Class were required to work through their rest periods and/or were never authorized or permitted to take
16 rest periods during their employment.

17 79. Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a ... rest ...
18 period in accordance with a state law... the employer shall pay the employee one additional hour of pay
19 at the employee’s regular rate of compensation for each workday that the rest ... period is not
20 provided.”

21 80. Even though Plaintiff and the MOD Class members were not authorized and permitted to
22 take off-duty rest periods, Defendants did not pay Plaintiff and the MOD Class appropriate rest period
23 premium wages for each day in which Defendants did not authorize and permit Plaintiff and the MOD
24 Class to take compliant rest periods, in violation of Labor Code § 226.7 and the applicable IWC Wage
25 Order.

26 81. Defendants had a common policy, pattern, and practice of failing to compensate Plaintiff
27 and the MOD Class with an hour of pay at their regular rate of pay for the times that Plaintiff and the
28 MOD Class were not authorized to take rest periods of at least 10 minutes for each four-hour work period,

1 or major fraction thereof.

2 82. Plaintiff and the MOD Class suffered and continue to suffer losses related to Defendants'
3 failure to pay an additional hour of pay for each day a rest period was not provided and the associated use
4 and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code and
5 IWC Wage Order violations.

6 83. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
7 to, any and all wages due, monies, and interest, to the extent permitted by law.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO MAINTAIN ACCURATE RECORDS**

11 (Violation of Labor Code §§ 1174 and 1198 and the "Records" section of the
12 Applicable IWC Wage Order)

13 (Alleged By Plaintiff Individually and On Behalf of the MOD Class Against All Defendants)

14 84. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 paragraphs above, as though fully set forth herein.

16 85. Labor Code § 1174(d) requires that employers, including Defendants, maintain accurate
17 records showing the hours worked daily by its employees and to whom wages were paid.

18 86. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
19 employer, including Defendants, to keep accurate information with respect to each one of their employees
20 including, but not limited to, the total wages paid each payroll period, and time records showing when the
21 employee begins and ends each work period, meal period(s), and split shift intervals; the total daily hours
22 worked; the total hours worked in the payroll period, and the applicable rates of pay.

23 87. Defendants violated Labor Code §§ 1174(d), and the applicable Wage Order when they
24 failed to keep accurate information and records regarding each employees' work and meal periods.
25 Defendants also failed to accurately record employee hours worked including, but not limited to, recording
26 the proper beginning and end of each work period, the total hours worked during the pay period, the
27 applicable rates of pay, and the wages paid.

28 88. Pursuant to Labor Code § 1174.5, any person employing labor who willfully fails to

maintain accurate and complete records required by Labor Code § 1174(d) is subject to a penalty. Defendants intentionally failed to maintain accurate records of the MOD Class members' total daily hours, the total hours worked in the payroll period, and total wages earned for the payroll period.

89. As a direct result of Defendants' violations alleged herein, Plaintiff and the MOD Class members have suffered and continue to suffer substantial losses related to Defendants' failure to record and maintain records of meal periods and time records.

90. Plaintiff, individually and on behalf of the MOD Class, seeks all available remedies for Defendants' violations including, but not limited to, penalties and costs to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FOURTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.

(Alleged By Plaintiff Individually and On Behalf of the MOD Class Against All Defendants)

91. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

92. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..."

93. Defendants' Labor Code and IWC Wage Order violations alleged herein constitute "unlawful, unfair or fraudulent business act or practices," which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal periods and pay Plaintiff and the MOD Class premium wages for failure to provide compliant meal periods, and (ii) failure to provide proper rest periods and pay Plaintiff and the MOD Class premium wages for failure to provide compliant rest periods.

94. Defendants intentionally avoided paying Plaintiff and members of the MOD Class all wages and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially lower cost of doing business, and thus, undercut its competitors.

95. Defendants lowered their costs of doing business by paying Plaintiff and members of the MOD Class an amount less than what is required by the California Labor Code and the applicable Wage Order of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and other similarly situated

employees to perform work without fair compensation and benefits.

96. Defendants held themselves out to Plaintiff and members of the MOD Class as being knowledgeable about, and adhering to, the employment laws of California at all times relevant herein. Plaintiff and members of the MOD Class relied on and believed in Defendants' representation concerning Defendants' adherence to the California laws, all to their detriment.

97. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding money owed to the class and withholding wages, compensation and benefits, which are all the property of Plaintiff and members of the MOD Class, in violation of the California Labor Code and the IWC Wage Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under California Business and Professions Code § 17200, *et seq.* As a result of Defendants' unfair competition, Plaintiff and members of the MOD Class suffered injury in fact by losing money and/or property.

98. Business and Professions Code § 17204, states, in relevant part, "[a]ctions for relief pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost money or property as a result of the unfair competition."

99. Defendants acquired money and property owed to Plaintiff and members of the MOD Class by means of an unlawful practice that constitutes unfair competition as defined by Business and Professions Code § 17200, *et seq.*

100. Plaintiff and members of the MOD Class are persons in interest under Business and Professions Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203 states, in relevant part, that "any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204."

101. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and benefits, as a result of Defendants' unfair competition. Thus, pursuant to Business and Professions Code §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of themselves and the putative classes.

102. Pursuant to Business and Professions Code § 17203, "[t]he court may make such orders or judgments, as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition."

103. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the MOD Class by committing the unlawful acts alleged herein. Thus, Defendants must make restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203 and restore all unpaid wages to Plaintiff and the MOD Class.

104. Plaintiff and the MOD Class suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

105. Plaintiff seeks all available remedies on behalf of themselves and on behalf of the the MOD Class, including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code § 17205.

WHEREFORE, Plaintiff pray for relief as hereinafter requested.

FIFTH CAUSE OF ACTION

REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE

PRIVATE ATTORNEYS GENERAL ACT

(Labor Code § 2698, *et seq.*)

(Alleged by Plaintiff on Behalf of All Aggrieved Employees of Defendants Against Defendants)

106. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

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

108. This cause of action involves allegations of violations of the Labor Code §§ 226.7, 512, 558, 558.1, 1174, 1174.5, 1198, which, pursuant to Labor Code § 2699.5, provides for a civil penalty to be assessed and collected by the LWDA or recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

1 109. Defendants employed Plaintiff during the applicable statutory time period and Plaintiff had
2 one or more of the alleged violations committed against him. Therefore, Plaintiff is an “aggrieved
3 employee” under PAGA because the alleged violator employed him and he had one or more of the alleged
4 violations committed against him. As an aggrieved employee, Plaintiff is properly suited to represent the
5 interests of other current and former aggrieved employees in a PAGA representative action.

6 110. Plaintiff seeks to recover all available civil penalties under Labor Code § 2699(a), on behalf
7 of him and other aggrieved employees for Defendants’ violations of the Labor Code, including but not
8 limited to Defendant’s violations of Labor Code §§ 226.7, 512, 558, 1174, 1174.5, and 1198.

9 111. For all provisions of the Labor Code for which a civil penalty is not specifically provided,
10 Labor Code § 2699(f) imposes upon each Defendants a penalty of one hundred dollars (\$100.00) for each
11 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
12 aggrieved employee per pay period for each subsequent violation.

13 112. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiff
14 and aggrieved employees lawfully compliant meal periods and by failing to pay them meal period
15 premium wages for each day a meal period was not provided. Under Labor Code § 2699(f)(2), Defendants
16 are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation
17 of Labor Code §§ 226.7 and 1198, and \$200 for each aggrieved employee per pay period for each
18 subsequent violation.

19 113. Defendants violated Labor Code §§ 226.7 and 1198 by failing to authorize and permit
20 Plaintiff and aggrieved employees to take duty-free rest periods and by failing to pay them rest period
21 premium wages for each day a rest period was not provided. Under Labor Code § 2699(f)(2), Defendants
22 are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation
23 of Labor Code §§ 226.7 and 1198, and \$200 for each aggrieved employee per pay period for each
24 subsequent violation.

25 114. Defendants violated Labor Code §§ 1174(d) and 1198 by failing to maintain records
26 detailing the start and end times of work shifts and meal periods. Labor Code § 1174.5 provides for a civil
27 penalty of \$500 for any person employing labor who willfully fails to maintain accurate and complete
28 records required by subdivision (d) of § 1174.

115. Defendants are and were Plaintiff's and other aggrieved employees' employers, or persons acting on their behalf, within the meaning of Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order and, as such, are subject to civil penalties for each underpaid employee as set forth in Labor Code § 558.

116. Pursuant to Labor Code § 558, Defendants are subject to a civil penalty of \$50.00 for an initial violation of Labor Code § 512, for each aggrieved employee, for each pay period for which the aggrieved employee was not provided with a timely uninterrupted 30-minute meal period, as alleged herein. Furthermore, Labor Code § 558 imposes upon Defendants for each subsequent violation of Labor Code § 512 a civil penalty of \$100.00 for each aggrieved employee for each pay period for which the aggrieved employee was not provided with a timely uninterrupted 30-minute meal period and all overtime wages for all hours worked, as alleged herein.

117. Labor Code § 558 also imposes upon Defendants for each initial violation of the Hours and Days of Work section of the applicable IWC Wage Order a civil penalty of \$50.00 for each aggrieved employee for each pay period for which the aggrieved employee was not provided with a paid uninterrupted 10-minute rest period, as alleged herein. Furthermore, Labor Code § 558 imposes upon Defendants for each subsequent violation of the Hours and Days of Work section of the applicable IWC Wage Order a civil penalty of \$100.00 for each aggrieved employee for each pay period for which the aggrieved employee was not provided with a paid uninterrupted 10-minute rest period, as alleged herein.

118. Defendants violated Labor Code § 1198 when they failed to comply with the maximum hours of work and the standard conditions of labor fixed by the IWC under the "Records," the "Meal Periods", and the "Rest Periods" Sections of the applicable IWC Wage Order, by failing to provide compliant meal and rest periods, failing to pay meal and rest period premium wages, and failing to keep and provide accurate records, as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code § 1198 and \$200 for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1198.

119. For bringing this action, Plaintiff is additionally entitled to attorney's fees and costs incurred

herein.

120. Plaintiff seeks to recover civil penalties on behalf of herself and other aggrieved employees for Defendants' violations of the Labor Code, including but not limited to Defendants' violations of Labor Code §§ 226.7, 512, 558, 1174, 1174.5, and 1198, pursuant to Labor Code § 2698, *et seq.* The exact amount of the applicable penalties is in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgment against Defendants as follows:

- a. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 2699;
- b. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- c. For civil penalties pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*;
- d. For restitution as provided by Business and Professions Code § 17200, *et seq.*;
- e. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200, *et seq.*;
- f. For an award of damages in the amount of unpaid compensation and monies including, but not limited to actual damages, unpaid wages, and other penalties according to proof, including interest thereon, to the extent permissible by law;
- g. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal, rest, and recovery period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;
- h. For injunctive relief as provided by the Labor Code and Business and Professions

Code § 17200, *et seq.*

- i. For pre- and post-judgment interest;
- j. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;
- k. For an accounting to determine all money wrongfully obtained and held by Defendants;
- l. An award of such other and further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

Dated: November 12, 2021

GRAHAMHOLLIS APC

By: 

GRAHAM S.P. HOLLIS
VILMARIE CORDERO
HALI ANDERSON
NATHAN REESE
Attorneys for Plaintiff