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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

MARIANO AGUIRRE, JR., individually, and on
 behalf of all others similarly situated,

Plaintiff,

vs.

BW PACKAGING SYSTEMS, INC., a Missouri corporation; BARRY-WEHMILLER GROUP, INC., a Missouri corporation; BARRY-WEHMILLER COMPANIES, INC., a Missouri corporation; BARRY-WEHMILLER DESIGN GROUP, INC., a Missouri corporation; THIELE TECHNOLOGIES LLC, a California limited liability company; DESIGN GROUP FACILITY SOLUTIONS, INC.; PNEUMATIC SCALE ANGELUS, LLC; ANGELUS SANITARY CAN MACHINE COMPANY, LLC; ANGELUS MACHINE CORPORATION, INTERNATIONAL; BW FLEXIBLE SYSTEMS, LLC; BW INTEGRATED SYSTEMS, LLC; ACCRAPLY, LLC; ALLIANCE MACHINE SYSTEMS, INTERNATIONAL, LLC; BARRY-WEHMILLER PAPERSYSTEMS, INC.; THE WARD MACHINERY COMPANY; PAPER CONVERTING MACHINE COMPANY; SYNERLINK, USA, INC.; AROL NORTH AMERICA, INC.; W+D NORTH AMERICA, INC.; BALDWIN TECHNOLOGY COMPANY, INC.; BALDWIN AMERICAS CORPORATION; CARR BIOSYSTEMS; and DOES 1 through 10, inclusive,

Case No.: 21STCV39617

**SECOND AMENDED CLASS ACTION
 AND REPRESENTATIVE ACTION
 COMPLAINT:**

1. Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802];
6. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
7. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
9. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

Defendants

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1 Plaintiff Mariano Aguirre, Jr. (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants BW Packaging Systems, Inc., Barry-
6 Wehmiller Group, Inc., Barry-Wehmiller Companies, Inc., Barrey-Wehmiller Design Group,
7 Inc., Thiele Technologies LLC, Design Group Facility Solutions, Inc., Pneumatic Scale
8 Angelus, LLC, Angelus Sanitary Can Machine Company, LLC, Angelus Machine
9 Corporation, International, BW Flexible Systems, LLC, BW Integrated Systems, LLC,
10 Accraply, LLC, Alliance Machine Systems, International, LLC, Barry-Wehmiller
11 Papersystems, Inc., The Ward Machinery Company, Paper Converting Machine Company,
12 Synerlink, USA, Inc., AROL North America, Inc., W+D North America, Inc., Baldwin
13 Technology Company, Inc., Baldwin Americas Corporation, and Carr Biosystems, LLC, and
14 Does 1 through 10 (collectively referred to as “Defendants”) for California Labor Code
15 violations and unfair business practices stemming from Defendants’ failure to pay minimum
16 wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and
17 permit rest periods, failure to maintain accurate records of hours worked and meal periods,
18 failure to timely pay all wages to terminated employees, failure to indemnify necessary
19 business expenses, and failure to furnish accurate wage statements.

20 2. Plaintiff brings the First through Eighth Causes of Action individually and as a
21 class action on behalf of himself and certain current and former employees of Defendants
22 (hereinafter collectively referred to as the “Class” or “Class Members” and defined more fully
23 below). The Class consists of Plaintiff and all other non-exempt employees who are or
24 previously were employed by any of the Defendants and performed work in California during
25 the period between October 27, 2017 to March 31, 2024. .

26 3. Plaintiff brings the Ninth Cause of Action as a representative action under the
27 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to
28 Plaintiff, the State of California, and past and present non-exempt, hourly-paid employees of

1 Defendants who worked in California during the applicable statute of limitations period
2 (hereinafter referred to as the “Aggrieved Employees”).

3 4. Defendants own/owned and operate/operated an industry, business, and
4 establishment within the State of California, including Los Angeles County. As such, and
5 based upon all the facts and circumstances incident to Defendants’ business in California,
6 Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial
7 Welfare Commission (“IWC”), and the California Business & Professions Code.

8 5. Despite these requirements, throughout the statutory period Defendants maintained
9 a systematic, company-wide policy and practice of:

- 10 (a) Failing to pay employees for all hours worked, including all minimum
11 wages, and overtime wages (at their correct rates) in compliance with the
12 California Labor Code and IWC Wage Orders;
- 13 (b) Failing to provide employees with timely and duty-free meal periods in
14 compliance with the California Labor Code and IWC Wage Orders, failing
15 to maintain accurate records of all meal periods taken or missed, and
16 failing to pay an additional hour’s pay for each workday a meal period
17 violation occurred;
- 18 (c) Failing to authorize and permit employees to take timely and duty-free rest
19 periods in compliance with the California Labor Code and IWC Wage
20 Orders, and failing to pay an additional hour’s pay for each workday a rest
21 period violation occurred;
- 22 (d) Failing to indemnify employees for necessary business expenses incurred;
- 23 (e) Willfully failing to pay employees all minimum wages, overtime wages,
24 meal period premium wages, and rest period premium wages due within
25 the time period specified by California law when employment terminates;
26 and
- 27 (f) Failing to maintain accurate records of the hours that employees worked.

(g) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff, the Class, and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

8. Plaintiff is a California resident that worked for Defendants in the County of Los Angeles, State of California, as a laser operator from approximately 2014 to May 2021.

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

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants BW Packaging Systems, Inc., Barry-Wehmiller Group, Inc., Barry-Wehmiller Companies, Inc., are Barry-Wehmiller Design Group, Inc. are:

- (a) Missouri corporations with their principal place of business in Los Angeles, California.
- (b) Business entities conducting business in numerous counties throughout the State of California, including in Los Angeles County;
- (c) The former employers of Plaintiff, and the current and/or former employers

1 of the putative Class. Defendants suffered and permitted Plaintiff, the
2 Class, and the Aggrieved Employees to work, and/or controlled their
3 wages, hours, or working conditions; and

- 4 (d) At all times mentioned herein, Defendants, and each of them, were at some
5 period of time the joint employers of Plaintiff, the Class, and the
6 Aggrieved Employees .

7 11. Plaintiff is informed and believes, and based upon that information and belief
8 alleges, that Defendant Thiele Technologies LLC is:

- 9 (a) A California limited liability company with its principal place of business
10 in Los Angeles, California.

- 11 (b) A business entity conducting business in numerous counties throughout the
12 State of California, including in Los Angeles County;

- 13 (c) The former employer of Plaintiff, and the current and/or former employers
14 of the putative Class. Thiele Technologies, LLC suffered and permitted
15 Plaintiff, the Class, and the Aggrieved Employees to work, and/or
16 controlled their wages, hours, or working conditions; and

- 17 (d) At all times mentioned herein, Defendants, and each of them, were at some
18 period of time the joint employers of Plaintiff, the Class, and the
19 Aggrieved Employees .

20 12. Plaintiff is informed and believes, and based upon that information and belief
21 alleges, that Defendants Design Group Facility Solutions, Inc., Pneumatic Scale Angelus,
22 LLC, Angelus Sanitary Can Machine Company, LLC, Angelus Machine Corporation,
23 International, BW Flexible Systems, LLC, BW Integrated Systems, LLC, Accraply, LLC,
24 Alliance Machine Systems, International, LLC, Barry-Wehmiller Papersystems, Inc., The
25 Ward Machinery Company, Paper Converting Machine Company, Synerlink, USA, Inc.,
26 AROL North America, Inc., W+D North America, Inc., Baldwin Technology Company, Inc.,
27 Baldwin Americas Corporation, and Carr Biosystems, LLC are:

- 28 (a) American business entities incorporated in a State within the United States

of America;

(b) Business entities conducting business in numerous counties throughout the State of California, including in Los Angeles County;

(c) The former employer of Plaintiff, and the current and/or former employers of the putative Class. Design Group Facility Solutions, Inc., Pneumatic Scale Angelus, LLC, Angelus Sanitary Can Machine Company, LLC, Angelus Machine Corporation, International, BW Flexible Systems, LLC, BW Integrated Systems, LLC, Accraply, LLC, Alliance Machine Systems, International, LLC, Barry-Wehmiller Papersystems, Inc., The Ward Machinery Company, Paper Converting Machine Company, Synerlink, USA, Inc., AROL North America, Inc., W+D North America, Inc., Baldwin Technology Company, Inc., Baldwin Americas Corporation, and Carr Biosystems, LLC suffered and permitted Plaintiff, the Class, and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions; and

(d) At all times mentioned herein, Defendants, and each of them, were at some period of time the joint employers of Plaintiff, the Class, and the Aggrieved Employees .

13. Plaintiff does not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff, the Class, and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

14. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff, the Class, and the Aggrieved Employees in

1 the State of California.

2 15. Plaintiff is informed and believes and thereon alleges that at all relevant times each
3 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
4 the other employees described in the class definitions below, and exercised control over their
5 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
6 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer,
7 officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in
8 interest and/or predecessor in interest of some or all of the other Defendants, and was engaged
9 with some or all of the other Defendants in a joint enterprise for profit, and bore such other
10 relationships to some or all of the other Defendants so as to be liable for their conduct with
11 respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges
12 that each Defendant acted pursuant to and within the scope of the relationships alleged above,
13 that each Defendant knew or should have known about, and authorized, ratified, adopted,
14 approved, controlled, aided and abetted the conduct of all other Defendants.

15 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 16. Plaintiff is a California resident who worked for Defendants in the County of Los
17 Angeles, State of California, as a reconditioning associate. During the statutory time period,
18 Plaintiff was typically scheduled to work 5 days in a workweek, and typically in excess of 8
19 hours in a single workday.

20 17. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
21 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
22 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
23 periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all
24 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to
25 furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience
26 working for Defendants was typical and illustrative.

27 18. Throughout the statutory period, Defendants maintained a policy and practice of
28 not paying Plaintiff, the Class, and the Aggrieved Employees for all hours worked, including

1 all overtime wages. Defendants regularly use a system of time rounding in a manner that
2 resulted, over a period of time, in failing to compensate Plaintiff, the Class, and the Aggrieved
3 Employees properly for all the time they have actually worked, even though the realities of
4 Defendants' operations are such that it is possible, practical, and feasible to count and pay for
5 work time to the minute. Also throughout the statutory period, Plaintiff, the Class, and the
6 Aggrieved Employees received bonuses, incentive compensation, and other remuneration.
7 However, Defendants failed to incorporate all remuneration when determining the correct
8 overtime rate of pay and break premium rate of pay, leading to underpayment of
9 compensation. This resulted in the Defendants' failure to pay overtime rates for all hours
10 worked in excess of 40 hours in a workweek. Also throughout the statutory period, Plaintiff,
11 the Class, and the Aggrieved Employees were required to work "off the clock". For example,
12 Plaintiff, the Class, and the Aggrieved Employees were required to perform pre-check-in
13 activities, which included without limitation waiting in line in order to clock into work and
14 when returning from meal periods, as well as undergoing a COVID screening prior to clocking
15 into work (and a line to undergo this screening), uncompensated. Plaintiff, the Class, and the
16 Aggrieved Employees were also required to attend pre-shift meetings with supervisors before
17 clocking into work, and were also required to prepare machines (such as laser machines) prior
18 to clocking in, all uncompensated. Further, Plaintiff, the Class, and the Aggrieved Employees
19 were often required to continue to work after clocking out of work, which included explaining
20 and providing information/reports to the following shift. In maintaining a practice of not
21 paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff,
22 the Class, and the Aggrieved Employees worked.

23 19. Throughout the statutory period, Defendants have wrongfully failed to provide
24 Plaintiff, the Class, and the Aggrieved Employees with legally compliant meal periods.
25 Defendants sometimes, but not always, required Plaintiff, the Class, and the Aggrieved
26 Employees to work in excess of five consecutive hours a day without providing 30-minute,
27 continuous and uninterrupted, duty-free meal period for every five hours of work, or without
28 compensating Plaintiff, the Class, and the Aggrieved Employees for meal periods that were

1 not provided by the end of the fifth hour of work or tenth hour of work. Defendants also did
2 not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take
3 a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the
4 end of the tenth hour of work. Moreover, Defendants did not have adequate written policies or
5 practices providing meal periods for Plaintiff, the Class, and the Aggrieved Employees, nor
6 did Defendants have adequate policies or practices regarding the timing of meal periods.
7 Defendants also did not have adequate policies or practices to verify whether Plaintiff, the
8 Class, and the Aggrieved Employees were taking their required meal periods. Accordingly,
9 Defendants' policy and practice was to not provide meal periods to Plaintiff, the Class, and the
10 Aggrieved Employees in compliance with California law. Defendants, however, regularly
11 failed to pay Plaintiff, the Class, and the Aggrieved Employees the additional wages to which
12 they were entitled for meal periods and that were not provided. Throughout the statutory
13 period, Defendants have wrongfully failed to authorize and permit Plaintiff, the Class, and the
14 Aggrieved Employees to take timely and duty-free rest periods. Defendants sometimes, but
15 not always, required Plaintiff, the Class, and the Aggrieved Employees to work in excess of
16 four consecutive hours a day without Defendants authorizing and permitting them to take a 10-
17 minute, continuous and uninterrupted, rest period for every four hours of work (or major
18 fraction of four hours), or without compensating Plaintiff, the Class, and the Aggrieved
19 Employees for rest periods that were not authorized or permitted. Defendants also did not
20 adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take a
21 rest period. Moreover, Defendants did not have adequate policies or practices permitting or
22 authorizing rest periods for Plaintiff, the Class, and the Aggrieved Employees, nor did
23 Defendants have adequate policies or practices regarding the timing of rest periods.
24 Defendants also did not have adequate policies or practices to verify whether Plaintiff, the
25 Class, and the Aggrieved Employees were taking their required rest periods. Further,
26 Defendants did not maintain accurate records of employee work periods, and therefore
27 Defendants cannot demonstrate that Plaintiff, the Class, and the Aggrieved Employees took
28 rest periods during the middle of each work period. Accordingly, Defendants' policy and

1 practice was to not authorize and permit Plaintiff, the Class, and the Aggrieved Employees to
2 take rest periods in compliance with California law. Defendants, however, regularly failed to
3 pay Plaintiff, the Class and the Aggrieved Employees the additional wages to which they were
4 entitled for rest periods and that they were not authorized and permitted to take.

5 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
6 Class to pay expenses that they incurred in direct discharge of their duties for Defendants
7 without reimbursement. For example, Plaintiff, the Class, and the Aggrieved Employees were
8 occasionally required to use their personal cellular telephones for work purposes. Plaintiff,
9 the Class, and the Aggrieved Employees were also required to purchase items such as their
10 own safety equipment and masks, without reimbursement. Plaintiff, the Class, and the
11 Aggrieved Employees incurred these substantial expenses as a direct result of performing their
12 job duties for Defendants, and Defendants have failed to indemnify Plaintiff, the Class, and
13 the Aggrieved Employees for these employment-related expenses.

14 21. Throughout the statutory period, Defendants willfully failed and refused to timely
15 pay Plaintiff, the Class, and the Aggrieved Employees at the conclusion of their employment
16 all wages for all minimum wages, overtime wages, meal period premium wages, and rest
17 period premium wages. Further, Defendants did not pay Plaintiff, the Class, and the
18 Aggrieved Employees their final paychecks immediately upon termination.

19 22. Throughout the statutory period, Defendants failed to provide adequate and suitable
20 seating to its employees despite the fact that seating was possible for its employees throughout
21 the workday. Defendants failed to make suitable seats available within reasonable proximity
22 to Plaintiffs and the Aggrieved Employees' respective work areas. Plaintiffs and the
23 Aggrieved Employees' shifts lasted over 5 hours, and often in excess of 8 hours, and they
24 were not permitted any reprieve or ability to comfortably sit and rest other than meal and rest
25 breaks, for which those were also lacking. Defendants' policy of not providing suitable and
26 adequate seating for standing positions was intentional and willful. Defendants unlawfully
27 violated the provisions of Section 14 of the applicable IWC Wage Order because the seating
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1 provision would not in any way interfere with the performance of the respective duties of
2 Plaintiff, the Class, and the Aggrieved Employees..

3 23. Throughout the statutory period, Plaintiff, the Class, and the Aggrieved Employees
4 were required to work in extreme working conditions, particularly temperatures inside the
5 facility were high, and without proper air conditioning or proper ventilation, and Defendants
6 failed to provide training and air conditioned facilities as well as sufficient water for Plaintiff,
7 the Class, and the Aggrieved Employees .

8 24. Throughout the statutory period, Defendants failed to furnish Plaintiff, the Class,
9 and the Aggrieved Employees with accurate, itemized wage statements showing all applicable
10 hourly rates, and all gross and net wages earned (including correct hours worked, correct
11 wages earned for hours worked, correct overtime hours worked, correct wages for meal
12 periods that were not provided in accordance with California law, correct wages for rest
13 periods that were not authorized and permitted to take in accordance with California law, and
14 Defendant's address). In addition, the wage statements Defendants issued failed to separately
15 itemize total hours worked in the pay period, and failed to distinguish between hours worked
16 and hours paid but not worked. Further, the wage statements do not show Defendant's address
17 as required by California law. As a result of these violations of California Labor Code §
18 226(a), the Plaintiff, the Class, and the Aggrieved Employees suffered injury because, among
19 other things:

- 20 (a) the violations led them to believe that they were not entitled to be paid
21 minimum wages, overtime wages, meal period premium wages, and rest
22 period premium wages to which they were entitled, even though they were
23 entitled;
- 24 (b) the violations led them to believe that they had been paid the minimum,
25 overtime, meal period premium, and rest period premium wages, even
26 though they had not been;
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- 1 (c) the violations led them to believe they were not entitled to be paid
2 minimum, overtime, meal period premium, and rest period premium wages
3 at the correct California rate even though they were;
- 4 (d) the violations led them to believe they had been paid minimum, overtime,
5 meal period premium, and rest period premium wages at the correct
6 California rate even though they had not been;
- 7 (e) the violations hindered them from determining the amounts of minimum,
8 overtime, meal period premium, and rest period premium owed to them;
- 9 (f) in connection with their employment before and during this action, and in
10 connection with prosecuting this action, the violations caused them to have
11 to perform mathematical computations to determine the amounts of wages
12 owed to them, computations they would not have to make if the wage
13 statements contained the required accurate information;
- 14 (g) by understating the wages truly due them, the violations caused them to
15 lose entitlement and/or accrual of the full amount of Social Security,
16 disability, unemployment, and other governmental benefits;
- 17 (h) the wage statements inaccurately understated the wages, hours, and wages
18 rates to which Plaintiff, the Class, and the Aggrieved Employees were
19 entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid
20 less than the wages and wage rates to which they were entitled.

21 Thus, Plaintiff, the Class, and the Aggrieved Employees are owed the amounts provided for in
22 California Labor Code § 226(e), including actual damages.

23 **CLASS ACTION ALLEGATIONS**

24 25. Plaintiff brings certain claims individually, as well as on behalf of each and all
25 other persons similarly situated, and thus, seek class certification under California Code of
26 Civil Procedure § 382.

27 26. All claims alleged herein arise under California law for which Plaintiff seeks relief
28

1 authorized by California law.

2 27. The proposed Class consists of and is defined as:

3 All non-exempt employees who are or previously were employed by any of the
4 Defendants and performed work in California during the period from October
5 27, 2017 to March 31, 2024.

6 28. At all material times, Plaintiff was a member of the Class.

7 29. Plaintiff undertakes this concerted activity to improve the wages and working
8 conditions of all Class Members.

9 30. There is a well-defined community of interest in the litigation and the Class is
10 readily ascertainable:

11 (a) Numerosity: The members of the Class (and each subclass, if any) are so
12 numerous that joinder of all members would be unfeasible and impractical.
13 The membership of the entire Class is unknown to Plaintiff at this time,
14 however, the Class is estimated to be greater than 100 individuals and the
15 identity of such membership is readily ascertainable by inspection of
16 Defendants' records.

17 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
18 the interests of each Class Member with whom there is a shared, well-
19 defined community of interest, and Plaintiff's claims (or defenses, if any)
20 are typical of all Class Members' claims as demonstrated herein.

21 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
22 the interests of each Class Member with whom there is a shared, well-
23 defined community of interest and typicality of claims, as demonstrated
24 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
25 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
26 the rules governing class action discovery, certification, and settlement.
27 Plaintiff has incurred, and throughout the duration of this action, will
28 continue to incur costs and attorneys' fees that have been, are, and will be

necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

31. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum wages, and overtime wages (at their correct rates);

- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to promptly pay all wages due to Class Members upon their discharge or resignation;
- (e) Failed to maintain accurate records of all hours Class Members worked, and all meal periods Class Members took or missed;
- (f) Failed to reimburse Class Members for all necessary business expenses; and
- (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

32. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;

- 1 (f) Without class certification, the prosecution of separate actions by
2 individual members of the class would create a risk of:
- 3 1) Inconsistent or varying adjudications with respect to individual
4 members of the Class which would establish incompatible standards
5 of conduct for Defendants; and/or
- 6 2) Adjudications with respect to the individual members which would,
7 as a practical matter, be dispositive of the interests of other
8 members not parties to the adjudications, or would substantially
9 impair or impede their ability to protect their interests, including but
10 not limited to the potential for exhausting the funds available from
11 those parties who are, or may be, responsible Defendants; and,
- 12 (g) Defendants have acted or refused to act on grounds generally applicable to
13 the Class, thereby making final injunctive relief appropriate with respect to
14 the class as a whole.

15 33. Plaintiff contemplates the eventual issuance of notice to the proposed members of
16 the Class that would set forth the subject and nature of the instant action. The Defendants'
17 own business records may be utilized for assistance in the preparation and issuance of the
18 contemplated notices. To the extent that any further notices may be required, Plaintiff would
19 contemplate the use of additional techniques and forms commonly used in class actions, such
20 as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or
21 by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

22 **FIRST CAUSE OF ACTION**

23 **(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)**

24 34. Plaintiff incorporates by reference and re-alleges as if fully stated herein
25 paragraphs 1 through 24 in this Complaint.

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

1 36. At all relevant times herein mentioned, Defendants knowingly failed to pay to
2 Plaintiff and the Class compensation for all hours they worked. By their failure to pay
3 compensation for each hour worked as alleged above, Defendants willfully violated the
4 provisions of Section 1194 of the California Labor Code, and any additional applicable Wage
5 Orders, which require such compensation to non-exempt employees.

6 37. Accordingly, Plaintiff and the Class are entitled to recover minimum wages for all
7 non-overtime hours worked for Defendants.

8 38. By and through the conduct described above, Plaintiff and the Class have been
9 deprived of their rights to be paid wages earned by virtue of their employment with
10 Defendants.

11 39. By virtue of the Defendants' unlawful failure to pay additional compensation to
12 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the
13 Class suffered, and will continue to suffer, damages in amounts which are presently unknown
14 to Plaintiff and the Class, but which exceed the jurisdictional minimum of this Court, and
15 which will be ascertained according to proof at trial.

16 40. By failing to keep adequate time records required by California Labor Code §
17 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
18 compensation due Plaintiff and the Class.

19 41. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are
20 entitled to recover liquidated damages (double damages) for Defendants' failure to pay
21 minimum wages.

22 42. California Labor Code section 204 requires employers to provide employees with
23 all wages due and payable twice a month. Throughout the statute of limitations period
24 applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a
25 month at rates required by law, including minimum wages. However, during all such times,
26 Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due,
27 and failed to pay those wages twice a month.

43. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

44. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 24 in this Complaint.

45. California Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

46. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

47. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours in a workday, as employees of Defendants.

48. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code § 510 and 1198. Plaintiff and the Class are regularly required to work overtime hours.

49. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to the Plaintiff and the Class for their overtime hours worked and at their correct rates, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

50. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to

1 Plaintiff and the Class.

2 51. Plaintiff and the Class also request recovery of overtime compensation according to
3 proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
4 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
5 California Labor Code and/or other statutes.

6 52. California Labor Code § 204 requires employers to provide employees with all
7 wages due and payable twice a month. The Wage Orders also provide that every employer
8 shall pay to each employee, on the established payday for the period involved, overtime wages
9 for all overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and
10 the Class with all compensation due, in violation of California Labor Code § 204.

11 **THIRD CAUSE OF ACTION**

12 **(Against All Defendants for Failure to Provide Meal Periods)**

13 53. Plaintiff incorporates by reference and re-alleges as if fully stated herein
14 paragraphs 1 through 24 in this Complaint.

15 54. Under California law, Defendants have an affirmative obligation to relieve the
16 Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the
17 start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal
18 periods no later than the start of the eleventh hour of work in the workday. Section 512 of the
19 California Labor Code, and Section 11 of the applicable Wage Orders require that an
20 employer provide unpaid meal periods of at least 30 minutes for each five-hour period
21 worked. It is a violation of Section 226.7 of the California Labor Code for an employer to
22 require any employee to work during any meal period mandated under any Wage Order.

23 55. Despite these legal requirements, Defendants regularly failed to provide Plaintiff
24 and the Class with both meal periods as required by California law. By their failure to permit
25 and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the
26 fact that Defendants made it impossible or impracticable to take these uninterrupted meal
27 periods), Defendants willfully violated the provisions of Section 226.7 of the California Labor
28 Code and the applicable Wage Orders.

1 56. Under California law, Plaintiff and the Class are entitled to be paid one hour of
2 additional wages for each workday he or she was not provided with all required meal
3 period(s), plus interest thereon.

4 57. California Labor Code § 204 requires employers to provide employees with all
5 wages due and payable twice a month. The Wage Orders also provide that every employer
6 shall pay to each employee, on the established payday for the period involved, premium wages
7 for all meal periods not provided in violation of law in the payroll period. Defendants failed
8 to provide Plaintiff and the Class with all compensation due, in violation of California Labor
9 Code § 204.

10 11 **FOURTH CAUSE OF ACTION**

12 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

13 58. Plaintiff incorporates by reference and re-alleges as if fully stated herein
14 paragraphs 1 through 24 in this Complaint.

15 59. Defendants are required by California law to authorize and permit breaks of 10
16 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more
17 than two hours). Section 512 of the California Labor Code, the applicable Wage Orders
18 require that the employer permit and authorize all employees to take paid rest periods of 10
19 minutes each for each 4-hour period worked. Thus, for example, if an employee's work time
20 is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to
21 authorize rest breaks as so required is itself a violation of California's rest break laws. It is a
22 violation of Section 226.7 of the California Labor Code for an employer to require any
23 employee to work during any rest period mandated under any Wage Order.

24 60. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
25 Class to take rest breaks, regardless of whether employees worked more than 4 hours in a
26 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
27 alleged above (or due to the fact that Defendants made it impossible or impracticable to take
28

1 these uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7
2 of the California Labor Code and the applicable Wage Orders.

3 61. Under California law, Plaintiff and the Class are entitled to be paid one hour of
4 premium wages rate for each workday he or she was not provided with all required rest
5 break(s), plus interest thereon.

6 62. California Labor Code § 204 requires employers to provide employees with all
7 wages due and payable twice a month. The Wage Orders also provide that every employer
8 shall pay to each employee, on the established payday for the period involved, premium wages
9 for all rest breaks not provided in violation of law in the payroll period. Defendants failed to
10 provide Plaintiff and the Class with all compensation due, in violation of California Labor
11 Code § 204.

12 **FIFTH CAUSE OF ACTION**

13 **(Against All Defendants for Failure to Indemnify Necessary Business Expenses)**

14 63. Plaintiff incorporates by reference and re-alleges as if fully stated herein
15 paragraphs 1 through 24 in this Complaint.

16 64. Defendants violated Labor Code section 2802 and the IWC Wage Orders, by
17 failing to pay and indemnify the Plaintiff and the Class for their necessary expenditures and
18 losses incurred in direct consequence of the discharge of their duties or of their obedience to
19 directions of Defendants.

20 65. As a result, Plaintiff and the Class were damaged at least in the amounts of the
21 expenses they paid, or which were deducted by Defendants from their wages.

22 66. Plaintiff and the class they represent are entitled to attorney's fees, expenses, and
23 costs of suit pursuant to Labor Code section 2802(c) and interest pursuant to Labor Code
24 section 2802(b).

25 **SIXTH CAUSE OF ACTION**

26 **(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time** 27 **Penalties)**

1 67. Plaintiff incorporates by reference and re-alleges as if fully stated herein
2 paragraphs 1 through 24 in this Complaint.

3 68. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if
4 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
5 due and payable immediately, and that if an employee voluntarily leaves his or her
6 employment, his or her wages shall become due and payable not later than seventy-two (72)
7 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
8 or her intention to quit, in which case the employee is entitled to his or her wages at the time
9 of quitting.

10 69. Within the applicable statute of limitations, the employment of Plaintiff and many
11 other members of the Class ended, i.e. was terminated by quitting or discharge, and the
12 employment of others will be. However, during the relevant time period, Defendants failed,
13 and continue to fail to pay terminated Class Members, without abatement, all wages required
14 to be paid by California Labor Code sections 201 and 202 either at the time of discharge, or
15 within seventy-two (72) hours of their leaving Defendants' employ.

16 70. Defendants' failure to pay Plaintiff and those Class members who are no longer
17 employed by Defendants their wages earned and unpaid at the time of discharge, or within
18 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California
19 Labor Code §§ 201 and 202.

20 71. California Labor Code § 203 provides that if an employer willfully fails to pay
21 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
22 continue as a penalty wage from the due date, and at the same rate until paid or until an action
23 is commenced; but the wages shall not continue for more than thirty (30) days.

24 72. Plaintiff and the Class are entitled to recover from Defendants their additionally
25 accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30
26 days maximum pursuant to California Labor Code § 203.

73. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the Class are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

SEVENTH CAUSE OF ACTION

(Against all Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

74. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 24 in this Complaint.

75. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

76. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.. In addition, the wage statements Defendants issued failed to separately itemize total hours worked in the pay period, and failed to distinguish between hours worked and hours paid but not worked.

77. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

78. Specifically, Plaintiff and the members of the Class have been injured by Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

79. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

80. Plaintiff and the Class are entitled to recover from Defendants their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a).

81. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

EIGHTH CAUSE OF ACTION

**(Against all Defendants for Violation of California Business & Professions Code §§ 17200,
et seq.)**

82. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 24 in this Complaint.

83. Defendants, and each of them, are “persons” as defined under California Business & Professions Code § 17201.

84. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

85. Defendants' activities, as alleged herein, are violations of California law, and

1 constitute unlawful business acts and practices in violation of California Business &
2 Professions Code §§ 17200, *et seq.*

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

9 **Failure to Pay Minimum Wages**

10 87. Defendants' failure to pay minimum wages, and other benefits in violation of the
11 California Labor Code constitutes unlawful and/or unfair activity prohibited by California
12 Business & Professions Code §§ 17200, *et seq.*

13 **Failure to Pay Overtime Wages**

14 88. Defendants' failure to pay overtime compensation and other benefits in violation of
15 California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
16 prohibited by California Business & Professions Code §§ 17200, *et seq.*

17 **Failure to Maintain Accurate Records of All Hours Worked**

18 89. Defendants' failure to maintain accurate records of all hours worked in accordance
19 with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or
20 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

21 **Failure to Provide Meal Periods**

22 90. Defendants' failure to provide meal periods in accordance with California Labor
23 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful
24 and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

25 **Failure to Authorize and Permit Rest Periods**

26 91. Defendants' failure to authorize and permit rest periods in accordance with
27 California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes
28 unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

1 **Failure to Indemnify Necessary Business Expenses**

2 92. Defendants’ failure to indemnify employees for necessary business expenses in
3 accordance with California Labor Code § 2802 and the IWC Wage Orders, as alleged above,
4 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§
5 17200, *et seq.*

6 **Failure to Provide Accurate Itemized Wage Statements**

7 93. Defendants’ failure to provide accurate itemized wage statements in accordance
8 with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
9 prohibited by California Business & Professions Code §§ 17200, *et seq.*

10 94. By and through their unfair, unlawful and/or fraudulent business practices
11 described herein, the Defendants, have obtained valuable property, money and services from
12 Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons
13 similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

14 95. Plaintiff and the Class Members suffered monetary injury as a direct result of
15 Defendants’ wrongful conduct.

16 96. Plaintiff, individually, and on behalf of members of the putative Class, is entitled
17 to, and do, seek such relief as may be necessary to disgorge money and/or property which the
18 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived,
19 by means of the above-described unfair, unlawful and/or fraudulent business practices.
20 Plaintiff and the Class are not obligated to establish individual knowledge of the wrongful
21 practices of Defendants in order to recover restitution.

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

27 98. Plaintiff, individually, and on behalf of members of the putative class, have no
28 plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members

1 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business
2 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
3 above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and
4 will continue to suffer irreparable harm unless the Defendants, and each of them, are
5 restrained from continuing to engage in said unfair, unlawful and/or fraudulent business
6 practices.

7 99. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
8 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
9 withholdings.

10 100. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff
11 and putative Class Members are entitled to restitution of the wages withheld and retained by
12 Defendants during a period that commences four years prior to the filing of this complaint; a
13 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
14 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
15 1021.5 and other applicable laws; and an award of costs.

16 **NINTH CAUSE OF ACTION**

17 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act** 18 **of 2004, Cal. Lab. Code § 2698 et seq.)**

19 101. Plaintiff incorporates by reference and re-alleges as if fully stated herein
20 paragraphs 1 through 24 in this Complaint.

21 102. At all times herein mentioned, Defendants were subject to the Labor Code of the
22 State of California and the applicable Industrial Welfare Commission Orders.

23 103. California Labor Code § 2699(a) specifically provides for a private right of action
24 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of
25 law, any provision of this code that provides for a civil penalty to be assessed and collected by
26 the Labor and Workforce Development Agency or any of its departments, divisions,
27 commissions, boards, agencies, or employees, for a violation of this code, may, as an
28 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

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

3 104. Plaintiff has exhausted his administrative remedies pursuant to California Labor
4 Code § 2699.3. On October 25, 2021, he initially gave written notice by online filing to the
5 Labor and Workforce Development Agency and by certified mail to some of the Defendants,
6 BW Packaging Systems, Inc., Barry-Wehmiller Group, Inc., Barry-Wehmiller Companies,
7 Inc., Barry-Wehmiller Design Group, Inc., and Thiele Technologies LLC, of the specific
8 provisions of the Labor Code that those Defendants have violated against Plaintiff and certain
9 current and former aggrieved employees, including the facts and theories to support the
10 violations. On February 6, 2024, Plaintiff submitted an amended letter, which amended the
11 initial letter by adding all the Defendants named in this Complaint, and supplementing facts to
12 support his claims. Plaintiff also paid the filing fee. Plaintiff’s PAGA case number is LWDA-
13 CM-849754-21.

14 105. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
15 Workforce Development Agency has not indicated that it intends to investigate Defendants’
16 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
17 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
18 the Labor Code described in this Complaint. These penalties include, but are not limited to,
19 penalties under California Labor Code §§ 210, 226.3, 558, 1197.1 and 2699(f)(2).

20 106. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
21 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any
22 entity, employing labor who willfully fails to maintain accurate and complete records required
23 by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the
24 applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the
25 employee begins and ends each work period. Meal periods, and total hours worked daily shall
26 also be recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every
27 employer shall keep total hours worked in the payroll period and applicable rates of pay.
28

1 107. Defendants, however, failed to maintain accurate records of hours worked and all
2 meal periods taken or missed by Plaintiff and the Aggrieved Employees. Defendants' failure
3 to provide and maintain records required by the Labor Code IWC Wage Orders deprived
4 Plaintiff and the Aggrieved Employees the ability to know, understand and question the
5 accuracy and frequency of meal periods, and the accuracy of their hours worked stated in
6 Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute
7 the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment
8 to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and
9 continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
10 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to
11 fully perform its obligation under state law, all to their respective damage in amounts
12 according to proof at trial. As a result of Defendants' knowing failure to comply with the
13 Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have
14 also suffered an injury in that they were prevented from knowing, understanding, and
15 disputing the wage payments paid to them. As a result, Defendants are liable to Plaintiff and
16 the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for
17 failing to maintain accurate records of hours worked and meal periods.

18 108. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
19 Code § 210. California Labor Code § 204 requires employers to pay employees all earned
20 wages two times per month. Throughout the statute of limitations period, employees were
21 entitled to be paid twice a month at their regular rates, including all meal period premium
22 wages owed, rest period premium wages owed, and wages owed for hours worked. However,
23 , during all such times, Defendants systematically failed and refused to pay the employees all
24 wages due, and failed to pay those wages twice a month, in that employees were not paid all
25 wages for all meal periods not provided by Defendants, all wages for all rest breaks not
26 authorized and permitted by Defendants, and all wages for all hours worked. As a result
27 Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided
28 for in Labor Code § 210 for failing to pay all earned wages twice per month.

1 109. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
2 Code § 1198. Labor Code § 1198 and 2698, et seq. requires suitable seating for employees.
3 Defendants failed to make suitable seats available within reasonable proximity to Plaintiffs
4 and the Aggrieved Employees' respective work areas. Plaintiffs and the Aggrieved
5 Employees' shifts lasted over 5 hours, and often in excess of 8 hours, and they were not
6 permitted any reprieve or ability to comfortably sit and rest other than meal and rest breaks,
7 for which those were also lacking. On information and belief, Plaintiff alleges that
8 Defendants' policy of failing to provide Plaintiff and the Aggrieved Employees with suitable
9 seating violated California law pursuant to California Industrial Welfare Commission Order
10 No. 7-2001 ("IWC Wage Order 7-2001"), specifically, Section 14, which provides:

11 (A) All working employees shall be provided with suitable seats when the nature of the
12 work reasonably permits the use of seats.

13 (B) When employees are not engaged in the active duties of their employment and the
14 nature of the work requires standing, an adequate number of suitable seats shall be
15 placed in reasonable proximity to the work area and employees shall be permitted to
16 use such seats when it does not interfere with the performance of their duties.

17 110. Defendants' policy of not providing suitable and adequate seating for standing
18 positions was intentional and willful. Defendants unlawfully violated the provisions of Section
19 14 of the applicable IWC Wage Order because the seating provision would not in any way
20 interfere with the performance of the respective duties of Plaintiff and the Aggrieved
21 Employees..

22 111. During the time period of employment for Plaintiff and the Aggrieved Employees,
23 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing
24 to maintain accurate records showing meal periods. Defendants' failure to provide and
25 maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the
26 Aggrieved Employees the ability to know, understand and question the accuracy and
27 frequency of meal periods. Therefore, Plaintiff and the Aggrieved Employees had no way to
28 dispute the resulting failure to pay wages, all of which resulted in an unjustified economic

1 enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have
2 suffered and continue to suffer, substantial losses related to the use and enjoyment of such
3 wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
4 Defendants to fully perform its obligation under state law, all to their respective damage in
5 amounts according to proof at trial. Because of Defendants' knowing failure to comply with
6 the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees
7 have also suffered an injury in that they were prevented from knowing, understanding, and
8 disputing the wage payments paid to them.

9 112. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
10 of civil penalties on behalf of himself, the State of California, and similarly Aggrieved
11 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an
12 amount to be shown according to proof at trial. These penalties are in addition to all other
13 remedies permitted by law.

14 113. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
15 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in
16 any action shall be entitled to an award of reasonable attorney's fees and costs."

17 **PRAYER FOR RELIEF**

18 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
19 the class claims, prays for relief and judgment against Defendants, jointly and severally, as
20 follows:

21 **Class Certification**

- 22 1. That this action be certified as a class action with respect to the First, Second,
23 Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;
24 2. That Plaintiff be appointed as the representative of the Class; and
25 3. That counsel for Plaintiff be appointed as Class Counsel.

26 **As to the First Cause of Action**

- 27 4. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code §§ 204, 510, 1194, 1197 and 1198 and applicable IWC Wage Orders by willfully

1 failing to pay all minimum wages due;

2 5. For general unpaid wages as may be appropriate;

3 6. For pre-judgment interest on any unpaid compensation commencing from the date
4 such amounts were due;

5 7. For liquidated damages;

6 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
7 California Labor Code § 1194(a); and,

8 9. For such other and further relief as the Court may deem equitable and appropriate.

9 As to the Second Cause of Action

10 10. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code §§ 204, 510, 1194, 1197 and 1198 and applicable IWC Wage Orders by willfully
12 failing to pay all overtime wages due;

13 11. For general unpaid wages at overtime wage rates as may be appropriate;

14 12. For pre-judgment interest on any unpaid overtime compensation commencing from
15 the date such amounts were due;

16 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
17 California Labor Code § 1194(a); and,

18 14. For such other and further relief as the Court may deem equitable and appropriate.

19 As to the Third Cause of Action

20 15. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

22 16. For unpaid meal period premium wages as may be appropriate;

23 17. For pre-judgment interest on any unpaid compensation commencing from the date
24 such amounts were due;

25 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
26 and for costs of suit incurred herein; and

27 19. For such other and further relief as the Court may deem equitable and appropriate.

28 As to the Fourth Cause of Action

1 20. That the Court declare, adjudge and decree that Defendants violated California
2 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

3 21. For unpaid rest period premium wages as may be appropriate;

4 22. For pre-judgment interest on any unpaid compensation commencing from the date
5 such amounts were due;

6 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
7 and for costs of suit incurred herein; and

8 24. For such other and further relief as the Court may deem equitable and appropriate.

9 As to the Fifth Cause of Action

10 25. That the Court declare, adjudge and decree that Defendants violated Labor Code §
11 2802 and the IWC Wage Orders;

12 26. For general unpaid wages and reimbursement of business expenses as may be
13 appropriate;

14 27. For pre-judgment interest on any unpaid compensation commencing from the date
15 such amounts were due;

16 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

17 29. For such other and further relief as the Court may deem equitable and appropriate.

18 As to the Sixth Cause of Action

19 30. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time
21 of termination of the employment;

22 31. For statutory wage penalties pursuant to California Labor Code § 203 for former
23 employees who have left Defendants' employ;

24 32. For pre-judgment interest on any unpaid wages from the date such amounts were
25 due;

26 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

27 34. For such other and further relief as the Court may deem equitable and appropriate.

28 As to the Seventh Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

36. For penalties and actual damages pursuant to California Labor Code § 226(e);

37. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

38. For reasonable attorneys' fees and for costs of suit incurred herein; and

39. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

40. That the Court declare, adjudge and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked (including minimum and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, and failing to maintain accurate records of all hours worked and meal periods, failing to furnish accurate wage statements, and failing to indemnify necessary business expenses;

41. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

42. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

44. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

45. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

1 46. That the Court declare, adjudge and decree that Defendants violated the California
2 Labor Code by failing to pay all wages owed, including overtime, failure to provide meal
3 periods, failing to maintain accurate records of meal periods, failing to authorize and permit
4 rest periods, failing to indemnify necessary business expenses, failing to pay final wages at
5 termination, and failing to furnish accurate wage statements;

6 47. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
7 other applicable Labor Code provisions;

8 48. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Labor Code § 2699; and,

10 49. For such other and further relief as the Court may deem equitable and appropriate.

11 As to all Causes of Action

12 50. For any additional relief that the Court deems just and proper.

13 51.

14 Dated: April 23, 2024

Respectfully submitted,

15 MOON LAW GROUP, PC

16
17 By: 

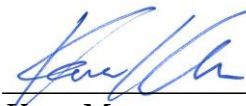
Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff

18
19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands a trial by jury as to all causes of action triable by jury.

22
23 Dated: April 23, 2024

MOON LAW GROUP, PC

24 By: 

Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880,
7 Los Angeles, California 90017. On **April 23, 2024**, I served the foregoing document described as:

8 **SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION**
9 **COMPLAINT**

10 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
11 addressed as follows:

12 **Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**
13 Christopher Decker, Esq. (christopher.decker@ogletreedeakins.com)
14 400 South Hope Street, Suite 1200
15 Los Angeles, CA 90071
16 Phone: (213) 239-9800
17 Fax: (213) 239-9045

18 *Attorneys for Defendants*
19 **BW PACKAGING SYSTEMS, INC., BARRY-WEHMILLER GROUP, INC., BARRY-**
20 **WEHMILLER COMPANIES, INC., BARRY-WEHMILLER DESIGN GROUP, INC., and**
21 **THIELE TECHNOLOGIES, INC.,**

22 [X] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to
23 accept electronic service, I caused the documents to be sent to the persons at the electronic
24 service addresses listed above via third-party cloud service **CASEANYWHERE.**

25 X (State) I declare under penalty of perjury under the laws of the State of
26 California that the above is true and correct.

27 Executed on **April 23, 2024**, at Los Angeles, California.

28 _____
Janelle Jickain

Name

/s/ Janelle Jickain

Signature