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HERBERT PANG and SCOTT REGIER

and the Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HERBERT PANG and SCOTT REGIER,
individually, on behalf of those similarly
situated, and on behalf of Aggrieved Employees
pursuant to the California Private Attorneys
General Act;

Plaintiffs,

vs.

FARMERS INSURANCE EXCHANGE; a
business entity form unknown, and DOES 1
through 25, inclusive,

Defendants.

Case No. **21STCV37846**

**CLASS ACTION COMPLAINT AND
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.:**

- 1. FAILURE TO PAY OVERTIME WAGES;**
- 2. FAILURE TO PROVIDE MEAL PERIODS;**
- 3. FAILURE TO PROVIDE REST BREAKS;**
- 4. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;**
- 5. UNFAIR AND UNLAWFUL BUSINESS PRACTICES (BUS. & PROF. CODE SECTION 17200, ET SEQ.); AND**
- 6. ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.**

COMES NOW, Plaintiffs HERBERT PANG and SCOTT REGIER (“Plaintiffs”), individually, on behalf of those similarly situated, (“Plaintiff Class” or “Class”) and on behalf of other aggrieved employees pursuant to the California Labor Code Private Attorneys General Act, and allege as follows:

INTRODUCTION

1. Plaintiffs allege, on behalf of themselves, similarly situated and aggrieved Guaranteed Repair Program Field Consultants working in California for Defendant FARMERS INSURANCE EXCHANGE and DOES 1 through 25 (“Defendants”), that Defendants systematically and unlawfully misclassified California-based Guaranteed Repair Program Field Consultants as exempt employees, depriving these employees of lawful overtime wages, meal periods, rest breaks and wage statements. As a result, Defendants violated California Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1198. Through this action, Plaintiffs seek to recover all due and owing wages, damages, and penalties, all available remedies under California Labor Code Private Attorneys General Act (“PAGA”), and attorney’s fees and costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are citizens and residents of California, regularly conduct business in California, have sufficient minimum contacts in California, and/or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

4. Venue is proper in the judicial district and the County of Los Angeles, California, because Plaintiffs, the Plaintiff Class, and many of the Aggrieved Employees worked for Defendants in the County of Los Angeles. Upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Los Angeles.

THE PARTIES

5. At all times herein mentioned, Plaintiffs were residents of and/or worked in the County of Los Angeles, State of California.

6. Plaintiffs, on behalf of themselves and all others similarly situated current and former employees of Defendants in the State of California and at any time during the four (4) years preceding the filing of this action, and continuing while this action is pending, bring this class action to recover, among other things, unpaid overtime wages, meal period premiums, rest period premiums, penalties for failure to provide accurate itemized wage statements, interest, other applicable penalties and attorneys' fees and costs.

7. Defendants FARMERS INSURANCE EXCHANGE and/or DOES 1 through 25 (collectively "Defendants") are authorized to do and are doing business within the County of Los Angeles in the State of California, where they maintain their headquarters as their principal place of business as insurers. At all times herein mentioned, Defendant FARMERS INSURANCE EXCHANGE was and is an employer whose employees are engaged in the State of California, including the County of Los Angeles.

8. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

9. Plaintiffs are informed and believe, and based thereon allege, that each and all of the acts and omissions alleged herein were performed by, or are attributable to Defendants FARMERS INSURANCE EXCHANGE and/or DOES 1 through 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants represent and were in accordance with Defendants' official policy.

10. At all relevant times, Defendants were the employers of Plaintiffs within the meaning of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs so as to make

each of said Defendants employers and employers liable under the statutory provisions set forth herein.

11. Defendants had the authority to hire and terminate Plaintiffs, the Plaintiff Class, and the Aggrieved Employees, to set work rules and conditions governing Plaintiffs, the Plaintiff Class, and the Aggrieved Employees' employment, and to supervise their daily employment activities.

12. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs, the Plaintiff Class, and the Aggrieved Employees' employment for them to be joint employers of Plaintiffs, the Plaintiff Class, and the Aggrieved Employees.

13. Defendants directly hired and paid wages and benefits to Plaintiffs, the Plaintiff Class, and the Aggrieved Employees.

14. Defendants continue to misclassify and employ salaried exempt employees within the State of California.

15. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

16. Plaintiffs are informed and believe, and based thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

17. Defendants, jointly and severally, employed Plaintiffs as salaried exempt Guaranteed Repair Program Field Consultants in the County of Los Angeles. Plaintiff HERBERT PANG started working for Defendants on or about April 1, 2007. Plaintiff SCOTT REGIER started working for Defendants on or about October 1, 2009.

18. Plaintiffs, the Plaintiff Class and Aggrieved Employees were improperly designated as exempt employees by Defendants, rendering Plaintiffs, the Plaintiff Class and Aggrieved Employees ineligible for overtime pay, as well as legally mandated meal periods, and rest breaks. Plaintiffs, the Plaintiff Class and Aggrieved Employees did not spend a majority of their working time engaged in duties which would render their employment exempt from overtime mandates. They had little to no

1 managerial or supervisory duties. They did not have authority to formulate, affect, interpret, or
2 implement management policies or operating practices. They did not have authority to waive or
3 deviate from established policies and procedures without prior approval. Plaintiffs, the Plaintiff Class
4 and Aggrieved Employees did not have authority to commit Defendants to matters that have
5 significant financial impact. They were not involved in planning long or short-term business
6 objectives. Further, Plaintiffs, the Plaintiff Class and Aggrieved Employees were not permitted by
7 Defendants to regularly exercise discretion and independent judgment in performing their job duties.
8 They did not perform their duties under only general supervision along specialized or technical lines
9 requiring special training, experience or knowledge. As Guaranteed Repair Program Field
10 Consultants, Plaintiffs, the Plaintiff Class and Aggrieved Employees did not fall into any exemption
11 from the overtime wage requirements set forth in the California Labor Code.

12 19. Throughout their tenure and at all times during the Relevant Period, Defendants
13 employed Plaintiffs, the Plaintiff Class, and aggrieved employees but unlawfully failed to pay them
14 overtime wages, failed to provide them with all meal periods and rest periods to which they were
15 entitled, failed to provide them with accurate itemized wage statements, and failed to provide and
16 adhere to other related protections afforded by the California Labor Code and applicable Industrial
17 Welfare Commission (“IWC”) Wage Order because they misclassified them as exempt employees.

18 20. Plaintiffs, the Plaintiff Class and Aggrieved Employees regularly worked over eight
19 (8) hours in a day, and/or forty (40) hours in a week for Defendants during the Relevant Period.

20 21. In addition to their base salary, Plaintiffs, the Plaintiff Class, and the Aggrieved
21 Employees earned non-discretionary bonuses, commissions, and/or incentive pay.

22 22. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
23 should have known that pursuant to California Labor Code sections 510 and 1198, and the applicable
24 IWC Wage Order, Plaintiffs, the Plaintiff Class, and the Aggrieved Employees were entitled to receive
25 certain wages for overtime compensation and that Plaintiffs, the Plaintiff Class, and the Aggrieved
26 Employees were not receiving such compensation. By way of example, Defendants required
27 Plaintiffs, the Plaintiff Class, and the Aggrieved Employees to work off-the-clock. In addition,
28 Defendants failed to correctly calculate the overtime rate of pay by failing to include non-discretionary

1 commissions, non-discretionary bonuses, and/or non-discretionary performance pay in the regular rate
2 of pay for purposes of overtime compensation.

3 23. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
4 should have known that pursuant to California Labor Code sections 1194, 1197, 1197.1, and the
5 applicable IWC Wage Order, Plaintiffs, the Plaintiff Class, and the Aggrieved Employees were
6 entitled to receive at least minimum wages for all hours worked and that Plaintiffs, the Plaintiff Class,
7 and the Aggrieved Employees were not receiving minimum wages for all hours worked. Defendants
8 required Plaintiffs, the Plaintiff Class, and the Aggrieved Employees to perform work off-the-clock.

9 24. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
10 should have known that pursuant to California Labor Code sections 226.7, 512, and the applicable
11 IWC Wage Order, Plaintiffs, the Plaintiff Class, and the Aggrieved Employees were entitled to receive
12 a meal period or payment of one (1) additional hour of pay at their regular rate of compensation when
13 they were not provided with an uninterrupted meal period of no less than thirty (30) minutes for a
14 work period of more than five hours per day and that Plaintiffs, the Plaintiff Class, and the Aggrieved
15 Employees were entitled to receive a second meal period or payment of one (1) additional hour of pay
16 at their regular rate of compensation when they were not provided with an uninterrupted second meal
17 period of no less than thirty (30) minutes for a work period of more than ten (10) hours per day.
18 However, Plaintiffs, the Plaintiff Class, and the Aggrieved Employees did not receive all meal periods
19 or payment of one (1) additional hour of pay at their regular rate of compensation when a meal period
20 was missed, shortened, taken late, and/or interrupted.

21 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
22 should have known that pursuant to California Labor Code section 226.7 and the applicable IWC
23 Wage Order, Plaintiffs, the Plaintiff Class, and the Aggrieved Employees were entitled to receive all
24 rest periods or payment of one (1) additional hour of pay at their regular rate of compensation when
25 they were not provided with an uninterrupted rest period of no less than ten (10) minutes for every
26 four hours, or major fraction thereof, worked. However, Plaintiffs, the Plaintiff Class, and the
27 Aggrieved Employees did not receive all rest periods or payment of one (1) additional hour of pay at
28 their regular rate of compensation when a rest period was missed, shortened, taken late, and/or

1 interrupted.

2 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or
3 should have known that pursuant to California Labor Code section 204, Plaintiffs, the Plaintiff Class,
4 and the Aggrieved Employees were entitled to timely payment of wages during their employment.
5 Plaintiffs, the Plaintiff Class, and the Aggrieved Employees did not receive payment of all wages,
6 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest
7 period premium wages within permissible time periods.

8 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
9 or should have known that they were required to provide Plaintiffs, the Plaintiff Class, and the
10 Aggrieved Employees with complete and accurate itemized wage statements pursuant to California
11 Labor Code section 226, but failed to do so.

12 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
13 or should have known that pursuant to California Labor Code section 1174, Defendants had to keep
14 complete and accurate payroll records for Plaintiffs, the Plaintiff Class, and the Aggrieved
15 Employees in accordance with California law, but, in fact, did not keep complete and accurate
16 payroll records.

17 **CLASS ACTION ALLEGATIONS**

18 29. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others
19 similarly situated, as members of a proposed class pursuant to California Code of Civil Procedure
20 section 382. The class satisfies the numerosity, commonality, typicality, adequacy, predominance,
21 and superiority requirements under California Code of Civil Procedure section 382.

22 30. The proposed class is defined as follows:

23 **All Guaranteed Repair Program Field Consultants working for Defendants in the**
24 **State of California and misclassified as exempt from earning overtime wages**
25 **within the Relevant Period.**

26 31. Relevant Period is defined as the period beginning four (4) years prior to the filing of
27 this action and ending at the time this action settles or proceeds to final judgment (the "Relevant
28

Period"). Plaintiffs reserve the right to name additional class representatives. Plaintiffs reserve the right to establish additional subclasses as appropriate.

32. There is a well-defined community of interest in the litigation and the Class is easily ascertainable.

33. The Class is so numerous that the individual joinder of all its members is impracticable. While the exact number and identities of class members are unknown to Plaintiffs at this time, the exact numbers of class members and their identities can be ascertained through appropriate discovery from records maintained by Defendants and their agents.

34. Common questions of fact and law exist as to all class members, which predominate over any questions affecting only individual members of the Class. The common legal and factual questions which do not vary from class member to class member and which may be determined without reference to the individual circumstances of any class member include, but are not limited to, the following:

- i. Whether Defendants had a policy and practice of failing to lawfully classify their non-exempt employees as exempt from overtime laws and other legal protections provided by the California Labor Code, as espoused herein;
- ii. Whether Defendants failed to pay Plaintiffs and Plaintiff Class wage premiums for missed, short, or prevented meal periods;
- iii. Whether Defendants failed to pay Plaintiffs and Plaintiff Class wage premiums for missed, short, or prevented rest breaks;
- iv. Whether Defendants failed to pay overtime wages to Plaintiffs and the other class members for all overtime hours worked;
- v. Whether Defendants failed to pay minimum wages to Plaintiffs and the other class members for all hours worked;
- vi. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other class members during their employment;
- vii. Whether Defendants failed to comply with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;

- viii. Whether Defendants failed to keep complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- ix. Whether Defendants' conduct was willful or reckless;
- x. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- xi. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- xii. Whether Plaintiffs and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

35. Plaintiffs' claims are typical of the claims of the Class, and Plaintiffs' interests are coincident with and not antagonistic to those of the other class members they seek to represent. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained attorneys experienced in the prosecution of class actions and Plaintiffs intend to prosecute this action vigorously.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual litigation of the claims of all class members is impracticable. Even if every class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each class member.

37. Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions

1 provide the class members who are not named in the complaint anonymity that allows for the
2 vindication of their rights.

3 **PAGA ALLEGATIONS**

4 38. At all times set forth herein, PAGA was applicable to Plaintiffs' employment by
5 Defendants.

6 39. At all times set forth herein, PAGA provides that any provision of law under the
7 California Labor Code that provides for a civil penalty, including unpaid wages and premium wages,
8 to be assessed and collected by the California Labor & Workforce Development Agency ("LWDA")
9 for violations of the California Labor Code may, as an alternative, be recovered through a civil action
10 brought by an aggrieved employee on behalf of herself and other current or former employees pursuant
11 to procedures outlined in California Labor Code section 2699.3.

12 40. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is
13 any person that was employed by the alleged violator and against whom one or more of the alleged
14 violations was committed.

15 41. Plaintiffs are employed by Defendants and the alleged violations were committed
16 against their time of employment and are, therefore, aggrieved employees. Plaintiffs and the other
17 employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that
18 they are current or former employees of Defendants and one of more of the alleged violations were
19 committed against them.

20 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
21 including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements
22 have been met:

- 23 a. The aggrieved employee shall give written notice by certified mail (hereinafter
24 "Employee's Notice") to the LWDA and the employer of the specific provisions of the
25 Labor Code alleged to have been violated, including the facts and theories to support
26 the alleged violations.
27 b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the
28 aggrieved employee by certified mail that it does not intend to investigate the alleged
violation within sixty (60) calendar days of the postmark date of the Employee's
Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the
aggrieved employee may commence a civil action pursuant to California Labor Code

1 section 2699 to recover civil penalties in addition to any other penalties to which the
2 employee may be entitled.

3 43. On October 11, 2021, Plaintiffs provided notice by electronic submission to the LWDA
4 and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to
5 have been violated, including the facts and theories to support the alleged violations, pursuant to Labor
6 Code section 2699.3.

7 44. Therefore, the administrative prerequisites under California Labor Code section
8 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of
9 California Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198,
10 2800 and 2802 will have been satisfied upon expiration of the sixty-five day notice period.

11 **FIRST CAUSE OF ACTION**

12 **Failure to Pay Overtime Wages**

13 **(Against All Defendants)**

14 45. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
15 allegations in all preceding paragraphs.

16 46. California Labor Code section 1198 and the applicable Industrial Welfare Commission
17 (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a
18 rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the
19 number of hours worked by the person on a daily or weekly basis.

20 47. Specifically, the applicable IWC Wage Order provides that Defendants were required
21 to pay Plaintiffs and the other class members at the rate of time-and-one-half for all hours worked in
22 excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

23 48. The applicable IWC Wage Order further provides that Defendants were required to pay
24 Plaintiffs and the other class members at the rate of two times the regular rate of pay for all hours
25 worked in excess of twelve (12) hours in a day.

26 49. California Labor Code section 510 codifies the right to overtime compensation at one-
27 and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
28 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)

1 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

2 50. During the relevant time period, Plaintiffs and the other class members worked in excess
3 of eight (8) hours in a day, and/or in excess of forty (40) hours in a week performing work duties
4 “off-the-clock” prior to clocking in and after clocking out.

5 51. During the relevant time period, Defendants intentionally and willfully failed to pay
6 overtime wages owed to Plaintiffs and the other class members.

7 52. Defendants’ failure to pay Plaintiffs overtime wages violates California Labor Code
8 sections 510 and 1198, and is therefore unlawful.

9 53. Pursuant to California Labor Code section 1194, Plaintiffs and the other class members
10 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys’
11 fees.

12 **SECOND CAUSE OF ACTION**

13 **Failure to Provide Meal Periods**

14 **(Against All Defendants)**

15 54. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
16 allegations in all preceding paragraphs.

17 55. At all relevant times set forth herein, the applicable IWC Wage Order and California
18 Labor Code section 226.7 and 512(a) were applicable to Plaintiffs’ and the other class members’
19 employment by Defendants.

20 56. At all relevant times, California Labor Code section 226.7 provides that no employer
21 shall require an employee to work during any meal or rest period mandated by an applicable order of
22 the California IWC.

23 57. At all relevant times, the applicable IWC Wage Order and California Labor Code
24 section 512(a) provide that an employer may not require, cause or permit an employee to work for a
25 work period of more than five (5) hours per day without providing the employee with a meal period of
26 not less than thirty (30) minutes, except that if the total work period per day of the employee is no more
27 than six (6) hours, the meal period may be waived by mutual consent of both the employer and
28 employee.

1 58. At all relevant times, the applicable IWC Wage Order and California Labor Code
2 section 512(a) further provide that an employer may not require, cause or permit an employee to work
3 for a work period of more than ten (10) hours per day without providing the employee with a second
4 uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is
5 no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
6 employer and the employee only if the first meal period was not waived.

7 59. During the relevant time period, Plaintiffs and the other class members, who were
8 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
9 legally-mandated meal periods by mutual consent, were required to work for periods longer than five
10 (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

11 60. During the relevant time period, Plaintiffs and the other class members, who were
12 scheduled to work for a period of time in excess of six (6) hours, were required to work for periods
13 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

14 61. During the relevant time period, Plaintiffs and the other class members, who were
15 scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve (12) hours,
16 and who did not waive their legally-mandated meal periods by mutual consent, was required to work
17 in excess of ten (10) hours without receiving a second uninterrupted meal period of not less than thirty
18 (30) minutes.

19 62. During the relevant time period, Plaintiffs and the other class members, who were
20 scheduled to work for a period of time in excess of twelve (12) hours, was required to work for periods
21 longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30)
22 minutes.

23 63. During the relevant time period, Defendants intentionally and willfully required
24 Plaintiffs and the other class members to work during meal periods.

25 64. During the relevant time period, Defendants failed to pay Plaintiffs and the other class
26 members the full meal period premium due pursuant to California Labor Code section 226.7.

27 65. Defendants' conduct violates the applicable IWC Wage Order and California Labor
28 Code sections 226.7 and 512(a).

1 66. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),
2 Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of
3 pay at their regular rate of compensation for each work day that a meal period was not provided.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Provide Rest Breaks**

6 **(Against All Defendants)**

7 67. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
8 allegations in all preceding paragraphs.

9 68. At all relevant times set forth herein, the applicable IWC Wage Order and California
10 Labor Code section 226.7 were applicable to Plaintiffs and the other class members' employment by
11 Defendants.

12 69. At all relevant times set forth herein, California Labor Code section 226.7 provides that
13 no employer shall require an employee to work during any rest period mandated by an applicable order
14 of the California IWC.

15 70. At all relevant times set forth herein, the applicable IWC Wage Order provides that
16 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
17 practicable shall be in the middle of each work period" and that the "rest period time shall be based on
18 the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
19 fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

20 71. During the relevant time period, Defendants required Plaintiffs and the other class
21 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period
22 per each four (4) hour period worked.

23 72. During the relevant time period, Defendants willfully required Plaintiffs and the other
24 class members to work during rest periods.

25 73. During the relevant time period, Defendants failed to pay Plaintiffs and the other class
26 members the full rest period premium due pursuant to California Labor Code section 226.7

27 74. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code
28 section 226.7.

1 75. Pursuant to the applicable IWC Wage Orders and California Labor Code section
2 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one additional
3 hour of pay at their regular rate of compensation for each work day that a rest period was not provided.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Provide Accurate Wage Statement**

6 **(Against All Defendants)**

7 76. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
8 allegations in all preceding paragraphs.

9 77. At all relevant times set forth herein, California Labor Code section 226(a) provides that
10 every employer shall furnish each of its employees an accurate itemized statement in writing showing
11 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
12 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
13 provided that all deductions made on written orders of the employee may be aggregated and shown as
14 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
15 the name of the employee and his or her social security number, (8) the name and address of the legal
16 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee. The deductions made
18 from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the
19 month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by
20 the employer for at least three years at the place of employment or at a central location within the State
21 of California.

22 78. At all relevant times set forth herein, Defendants have intentionally and willfully failed
23 to provide Plaintiffs and the other class members with accurate itemized wage statements. The
24 deficiencies include, but are not limited to, failing to state the name of the legal entity that is the
25 employer, the total hours worked (including time spent working off-the-clock), the amount of meal
26 period premium wages earned, and the amount of rest period premium wages earned.

27 79. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs
28 and the other class members have suffered injury and damage to their statutorily-protected rights.

80. More specifically, Plaintiffs and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

81. Plaintiffs and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars.

FIFTH CAUSE OF ACTION

Unfair and Unlawful Business Practices in Violation of Business and Professions Code Sec.

17200, et seq.

(Against All Defendants)

82. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

83. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, to the other class members, to the general public, and to Defendants' competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

84. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

85. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices of requiring employees, including Plaintiffs and the other class members, to work without paying them proper compensation violates California Labor Code sections 510, and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiffs and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants have also injured Plaintiffs by failing to provide accurate, itemized wage statements in violation of Labor Code section

1 226(a).

2 86. Further, during their tenures, Plaintiffs and the other class members earned and accrued
3 vacation time and/or paid time off pursuant to Defendants' policies. Nonetheless, Defendants
4 unilaterally eliminated Plaintiffs and other class members earned and accrued vacation time and/or paid
5 time off without paying Plaintiffs and other class members wages equivalent to their earned and accrued
6 vacation time and/or paid time off.

7 87. As a result of the herein described violations of California law, Defendants unlawfully
8 gained an unfair advantage over other businesses.

9 88. Plaintiffs and the other class members have been personally injured by Defendants'
10 unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss
11 of money and/or property.

12 89. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiffs
13 and the other class members are entitled to restitution of the wages withheld and retained by Defendants
14 during a period that commences four years from the filing of this complaint; an award of attorneys'
15 fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an
16 award of costs.

17 **SIXTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 2698, Et Seq.**

19 **(Against All Defendants)**

20 90. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
21 allegations in all preceding paragraphs.

22 91. PAGA expressly establishes that any provision of the California Labor Code which
23 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
24 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,
25 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
26 herself, and other current or former employees.

27 92. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
28 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to

1 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

2 93. Plaintiffs and the other misclassified salaried exempt employees are “Aggrieved
3 Employees” as defined by California Labor Code section 2699(c) in that they are all current or former
4 employees of Defendants, and one or more of the alleged violations were committed against them.

5 94. Defendants’ conduct, as alleged herein, violates numerous sections of the California
6 Labor Code, including, but not limited to, the following:

7 a. Violation of California Labor Code sections 510 and 1198 for failure to pay overtime
8 wages, as set forth more fully below;

9 b. Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
10 legally required meal periods, as set forth more fully below;

11 c. Violation of California Labor Code section 226.7 for failure to provide legally required
12 rest periods, as set forth more fully below; and

13 d. Violation of California Labor Code section 226(a) for failure to provide accurate wage
14 statements to Plaintiffs and Aggrieved Employees, as set forth more fully below.

15 95. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5,
16 Plaintiffs, acting in the public interest as a private attorney general, seeks assessment and collection of
17 civil penalties for Plaintiffs, all Aggrieved Employees, and the State of California against Defendants,
18 in addition to other remedies, for violations of Labor Code sections set forth herein. Pursuant to
19 California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be
20 distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and
21 education of employers and employees about their rights and responsibilities and twenty-five (25%) to
22 the Aggrieved Employees. Further, and as authorized by the California Labor Code sections 210,
23 218.5, and 2699, Plaintiffs seek recovery of their attorneys’ fees and costs.

24 **Failure to Pay Overtime Wages**

25 96. California Labor Code section 1198 and the applicable IWC Wage Order have provided
26 that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-
27 half or two-times that person’s regular rate of pay, depending on the number of hours worked by the
28 person on a daily or weekly basis.

97. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and Aggrieved Employees employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

98. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and Aggrieved Employees employed by Defendants, and working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.

99. California Labor Code section 510 codifies the right to overtime compensation at one-and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

100. During the relevant time period, Plaintiffs and Aggrieved Employees regularly worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week performing work duties “off-the-clock.”

101. During the relevant time period, Defendants failed to correctly calculate the overtime rate of pay by failing to include non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay in the regular rate of pay for purposes of overtime compensation.

102. Defendants' failure to pay Plaintiffs and Aggrieved Employees the unpaid balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

Failure to Provide Meal Periods

103. At all relevant times herein set forth, California Labor Code section 226.7 has provided that no employer shall require an employee to work during any meal period mandated by an applicable IWC Order.

104. At all relevant times herein set forth, California Labor Code section 512(a) has provided that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30)

1 minutes, except that if the total work period per day of the employee is not more than six (6) hours, the
2 meal period may be waived by mutual consent of both the employer and the employee.

3 105. During the relevant time period, Plaintiffs and Aggrieved Employees who were
4 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally
5 mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours
6 without a meal period of not less than thirty (30) minutes.

7 106. During the relevant time period, Plaintiffs and the Aggrieved Employees,
8 who were scheduled to work for a period of time in excess of six (6) hours, were required to work for
9 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
10 minutes.

11 107. During the relevant time period, Plaintiffs and the Aggrieved Employees,
12 who were scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve
13 (12) hours, and who did not waive their legally mandated meal periods by mutual consent, were
14 required to work in excess of ten (10) hours without receiving a second uninterrupted meal period of
15 not less than thirty (30) minutes.

16 108. During the relevant time period, Plaintiffs and the Aggrieved Employees,
17 who were scheduled to work for a period of time in excess of twelve (12) hours, were required to work
18 for periods longer than ten (10) hours without a second uninterrupted meal period of not less than thirty
19 (30) minutes.

20 109. During the relevant time period, Defendants willfully required Plaintiffs and the
21 Aggrieved Employees to work during meal periods and failed to compensate Plaintiffs and Aggrieved
22 Employees for work performed during meal periods. By way of example, Defendants failed to relieve
23 Plaintiffs of all duties such that Plaintiffs could take compliant meal periods. As a result, Plaintiffs
24 worked through mandated meal periods.

25 110. Defendants failed to pay Plaintiffs and the Aggrieved Employees the full meal period
26 premium due in violation of California Labor Code sections 226.7 and 512 on each occasion when a
27 timely, uninterrupted meal period of at least thirty (30) minutes was not provided. Defendants failed
28 to incorporate all nondiscretionary payments for work performed by Plaintiffs and the Aggrieved

1 Employees in the regular rate of compensation.

2 111. Defendants' conduct violates applicable IWC Wage Order(s), and California Labor
3 Code sections 226.7 and 512(a).

4 **Failure to Provide Rest Periods**

5 112. At all relevant times, California Labor Code section 226.7 has provided that no
6 employer shall require an employee to work during any rest period mandated by an applicable order of
7 the California IWC.

8 113. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
9 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
10 the middle of each work period" and that the "rest period time shall be based on the total hours worked
11 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless
12 the total daily work time is less than three and one-half (3½) hours.

13 114. Pursuant to the applicable IWC Wage Order and California Labor Code section
14 226.7(b), Plaintiffs and the Aggrieved Employees are entitled to recover from Defendants one (1)
15 additional hour of pay at the employee's regular hourly rate of compensation for each workday that the
16 rest period was not provided.

17 115. During the relevant time period, Defendants required Plaintiffs and the Aggrieved
18 Employees to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
19 period per each four (4) hour period, or major fraction thereof worked. During the relevant time period,
20 Defendants willfully required Plaintiffs and the Aggrieved Employees to work during rest periods. By
21 way of example, Defendants failed to relieve Plaintiffs of all duties such that Plaintiffs could take
22 compliant rest periods. As a result, Plaintiff worked through mandated rest periods.

23 116. Defendants failed to pay Plaintiffs and Aggrieved Employees the full rest period
24 premium due in violation of California Labor Code sections 226.7 and 512 on each occasion when a
25 timely, uninterrupted rest period of at least ten (10) minutes was not provided. Defendants failed to
26 incorporate all nondiscretionary payments for work performed by Plaintiffs and the Aggrieved
27 Employees in the regular rate of compensation.

28 117. Defendants' conduct violates the applicable IWC Wage Orders and California Labor

1 Code section 226.7.

2 **Failure to Provide Compliant Wage Statements**

3 118. At all relevant times set forth herein, California Labor Code section 226(a) provides that
4 every employer shall furnish each of its employees an accurate itemized statement in writing showing
5 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
6 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
7 provided that all deductions made on written orders of the employee may be aggregated and shown as
8 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
9 the name of the employee and his or her social security number, (8) the name and address of the legal
10 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee. The deductions made
12 from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the
13 month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by
14 the employer for at least three years at the place of employment or at a central location within the State
15 of California.

16 119. Defendants have intentionally and willfully failed to provide employees with complete
17 and accurate wage statements. The deficiencies include, among other things, the failure to state all
18 correct rates of pay, all hours worked, all meal period premium wages earned, and all rest period
19 premium wages earned.

20 **PRAYER FOR RELIEF**

21 Plaintiffs pray for relief and judgment against Defendants, jointly and severally, as follows:

22 **Class Certification**

- 23 1. That this action be certified as a class action;
24 2. That Plaintiffs be appointed as representative of the class;
25 3. That counsel for Plaintiffs be appointed as class counsel; and
26 4. That Defendants provide to Class Counsel immediately the names and most current/last
27 known contact information (address, e-mail and telephone numbers) of all class members.
28

For the First Through Fifth Causes of Action

5. For all actual, consequential, and incidental losses and damages, according to proof;
6. For general unpaid wages and such general and special damages as may be appropriate;
7. For statutory wage penalties pursuant to California Labor Code for Plaintiffs and the other class members;
8. For statutory penalties pursuant to California Labor Code;
9. For pre-judgment interest on any unpaid compensation from the date such amounts were due;
10. For restitution of wages withheld and retained by Defendant during a period that commences four years from the filing of this complaint, an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; an award of costs; and injunctive relief to ensure that Defendants cease and desist from engaging in the practices described herein;
11. For punitive damages;
12. For reasonable attorneys' fees and costs;
13. For injunctive relief; and
14. For such other and further relief as the Court may deem proper.

For the Sixth Cause of Action

15. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g), plus costs and attorneys' fees for violations of California Labor Code as set forth above; and
16. For such other and further relief as the Court may deem proper.

Respectfully Submitted,

Dated: October 14, 2021

BLACKSTONE LAW, APC

By:


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