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Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Bret Mercado

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

BRET MERCADO, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

CARDINAL GLASS INDUSTRIES, INC.,
a Minnesota corporation; CARDINAL CT
COMPANY, a Wisconsin corporation;
CARDINAL CG COMPANY, a Wisconsin
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

FILED
Superior Court Of California,
Sacramento
01/06/2022
Istewart
By _____, Deputy
Case Number:
34-2022-00313627

1 Plaintiff Bret Mercado, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on November 1, 2021, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

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

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ or employed persons
3 within the County of Sacramento and have violated the requirements of the California Labor
4 Code and applicable IWC Wage Order in this county which give rise to the penalties sought in
5 this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of
6 the California Labor Code and applicable IWC Wage Order in at least 1 location within the
7 County of Sacramento, including Defendants' plant located in Galt (680 Industrial Drive, Galt,
8 California 95632). Pursuant to California Civil Code of Procedure section 393, venue is proper
9 for the recovery of a penalty imposed by statute in the county in which the cause, or some part
10 of the cause, arose. Because Defendants have employees in Sacramento County, and Plaintiff
11 could bring an action filed under PAGA in any county in which an aggrieved employee worked
12 and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v.*
13 *Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

14 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
15 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
16 attorneys general their current or former employers for various civil penalties for violations of
17 various provisions in the California Labor Code.

18 THE PARTIES

19 6. Plaintiff Bret Mercado is a resident of Lynwood in Los Angeles County,
20 California. Defendants employed Plaintiff as an hourly paid, non-exempt Glass Handler and
21 then Furnace Operator from approximately November 2019 to December 2020. Plaintiff
22 worked for Defendants at their facility located in Los Angeles, California. Plaintiff typically
23 worked eight (8) hours or more per day, and five (5) days per week. At the time his
24 employment ended, Plaintiff was compensated approximately \$15.00 per hour. His job duties
25 included, without limitation, operating the furnace, measuring and labeling glass components,
26 preparing quality reports, and cleaning and maintaining the premises.

27 7. On information and belief, Defendants required some employees, including
28 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of

1 their hire or during their employment. On further information and belief, Defendants' dispute
2 resolution policy and/or arbitration agreement was and is both procedurally and substantively
3 unconscionable. Specifically, Defendants presented new hires with an Agreement to Mediate
4 and Arbitrate ("Arbitration Agreement"), which had to be reviewed and signed immediately.
5 In fact, upon information and belief, the Arbitration Agreement was one of several documents
6 presented to new employees for signature during the orientation process, including Code of
7 Safe Practices – General Safety Rules, Employee Acknowledgement of Meal and Rest Break
8 Policy, Employee Acknowledgement of Unlawful Harassment Policy, and Cardinal CT
9 Handbook. Also, employees did not have a meaningful opportunity to negotiate the terms of
10 the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to
11 sign on a take-it or leave-it basis. Further, Defendants did not set forth in the agreement or
12 otherwise provide employees with the rules which will govern the arbitration, instead forcing
13 employees to seek this information out on their own ("The American Arbitration Employment
14 Arbitration Rules and Mediation Procedures can be found online at
15 <https://www.adr.org/sites/default/files/Employment%20Rules.pdf>").

16 8. CARDINAL GLASS INDUSTRIES, INC. was and is, upon information and
17 belief, a Minnesota corporation, and at all times hereinafter mentioned, an employer whose
18 employees are engaged throughout this county and the State of California.

19 9. CARDINAL CT COMPANY was and is, upon information and belief, a
20 Wisconsin corporation, and at all times hereinafter mentioned, an employer whose employees
21 are engaged throughout this county and the State of California.

22 10. CARDINAL CG COMPANY was and is, upon information and belief, a
23 Wisconsin corporation, and at all times hereinafter mentioned, an employer whose employees
24 are engaged throughout this county and the State of California.

25 11. Plaintiff is unaware of the true names or capacities of the Defendants sued
26 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
27 amend the complaint and serve such fictitiously named Defendants once their names and
28 capacities become known.

1 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
2 were the partners, agents, owners, or managers of CARDINAL GLASS INDUSTRIES, INC.;
3 CARDINAL CT COMPANY; and CARDINAL CG COMPANY, at all relevant times.

4 13. Plaintiff is informed and believes, and thereon alleges, that each and all of the
5 acts and omissions alleged herein was performed by, or is attributable to, CARDINAL
6 GLASS INDUSTRIES, INC.; CARDINAL CT COMPANY; CARDINAL CG COMPANY;
7 and/or DOES 1 through 10 (collectively, “Defendants” or “CARDINAL”), each acting as the
8 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
9 other co-Defendants and was acting within the course and scope of such agency, employment,
10 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
11 of any and all Defendants were in accordance with, and represent, the official policy of
12 Defendants.

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

17 15. Plaintiff is informed and believes, and thereon alleges, that each of said
18 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
19 omissions, occurrences, and transactions alleged herein.

20 16. Under California law, Defendants are jointly and severally liable as employers
21 for the violations alleged herein because they have each exercised sufficient control over the
22 wages, hours, working conditions, and employment status of Plaintiff and other non-party
23 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
24 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
25 of employment, determined their rate of pay, and maintained their employment records.
26 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
27 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
28 common-law employment relationship. As joint employers of Plaintiff and other non-party

1 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
2 available to Plaintiff and other non-party Aggrieved Employees under the law.

3 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
4 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
5 non-party Aggrieved Employees because Defendants have:

- 6 (a) jointly exercised meaningful control over the work performed by
7 Plaintiff and other non-party Aggrieved Employees;
- 8 (b) jointly exercised meaningful control over Plaintiff's and other non-party
9 Aggrieved Employees' wages, hours, and working conditions, including
10 the quantity, quality standards, speed, scheduling, and operative details
11 of the tasks performed by Plaintiff and other non-party Aggrieved
12 Employees;
- 13 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
14 perform work which is an integral part of Defendants' businesses; and
- 15 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
16 Employees as a matter of economic reality in that Plaintiff and other
17 non-party Aggrieved Employees were dependent on Defendants, who
18 shared the power to set the wages of Plaintiff and other non-party
19 Aggrieved Employees and determined their working conditions, and
20 who jointly reaped the benefits from the underpayment of their wages
21 and noncompliance with other statutory provisions governing their
22 employment.

23 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
24 there has existed a unity of interest and ownership between Defendants such that any
25 individuality and separateness between the entities has ceased.

26 19. Furthermore, Defendants are jointly and severally liable as employers for the
27 violations alleged herein because Defendants have acted as a single integrated enterprise.
28 Courts consider four factors in determining whether two or more entities may be treated as a

1 single employer for the purposes of determining liability for labor code violations.:

2 (1) centralized control of labor relations; (2) interrelation of operations; (3) common
3 management; and (4) common ownership or financial control. No factor is controlling and all
4 need not be present.

5 20. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
6 Defendants have acted as a single integrated enterprise because:

- 7 (a) Defendant CARDINAL GLASS INDUSTRIES, INC. made final
8 decisions regarding employment matters related to Plaintiff and other
9 non-party Aggrieved Employees in the same manner and through the
10 same entity, regardless of which entity was acting as Plaintiff's and
11 other non-party Aggrieved Employees' immediate employer;
- 12 (b) Defendant CARDINAL GLASS INDUSTRIES, INC. controlled day-to-
13 day employment decisions of Defendants CARDINAL CT COMPANY;
14 and CARDINAL CG COMPANY;
- 15 (c) Defendants shared common officers, directors, and/or managers;
- 16 (d) Defendants utilized the same bank accounts, accounting records, lines of
17 credit, payroll preparation, telephone lines, company websites, office
18 space, facilities, employees and/or other facets of operation; and/or
- 19 (e) Defendants were subject to common ownership and financial control.

20 21. CARDINAL GLASS INDUSTRIES, INC.; CARDINAL CT COMPANY;
21 CARDINAL CG COMPANY; and DOES 1 through 10 are therefore alter egos of each other.

22 22. Adherence to the fiction of the separate existence of Defendants would permit
23 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
24 from liability for the wrongful acts committed by them under the name CARDINAL GLASS.

25 23. Plaintiff further alleges, upon information and belief, that Defendants
26 CARDINAL GLASS INDUSTRIES, INC.; CARDINAL CT COMPANY; and CARDINAL
27 CG COMPANY are alter egos of each other for the following reasons:

- 28 (a) On information and belief, CARDINAL CT COMPANY and

CARDINAL CG COMPANY are wholly owned subsidiaries of
CARDINAL GLASS INDUSTRIES, INC.;

- (b) On the California Secretary of State’s website
(<https://businesssearch.sos.ca.gov>), CARDINAL GLASS
INDUSTRIES, INC.; CARDINAL CT COMPANY; and CARDINAL
CG COMPANY share the same entity and mailing address, “775 Prairie
Center Drive, Suite 200, Eden Prairie, MN 55344;”
- (c) According to Defendants’ most recent “Statement of Information” forms
filed with the California Secretary of State, CARDINAL GLASS
INDUSTRIES, INC.; CARDINAL CT COMPANY; and CARDINAL
CG COMPANY share common officers and/or directors, including, but
not limited to, Secretary and Chief Financial Officer Jeffrey D.
Peterson;
- (d) On the California Secretary of State’s website, CARDINAL GLASS
INDUSTRIES, INC.; CARDINAL CT COMPANY; and CARDINAL
CG COMPANY share the same service of process, “National Registered
Agents, Inc. (C1941323);” and
- (e) On information and belief, CARDINAL GLASS INDUSTRIES, INC.;
CARDINAL CT COMPANY; and CARDINAL CG COMPANY utilize
the same standardized employment forms, including, but not limited to,
employee scheduling and communication forms, and issue the same
employment policies, including, but not limited to, the Employee
Handbook.

PAGA REPRESENTATIVE ALLEGATIONS

24. Defendants are an industry leading manufacturer and developer of residential
glass for windows and doors and operate four (4) facilities in California. Upon information
and belief, Defendants maintain a centralized Human Resources (“HR”) department at their
corporate headquarters in Eden Prairie, Minnesota, which is responsible for the recruiting and

1 hiring of new employees, and communicating and implementing Defendants' company-wide
2 policies, including timekeeping policies and meal and rest period policies, to employees
3 throughout California.

4 25. In particular, Plaintiff and other non-party Aggrieved Employees, on
5 information and belief, received the same standardized documents and/or written policies.
6 Upon information and belief, the usage of standardized documents and/or written policies,
7 including new-hire documents, indicate that Defendants dictated policies at the corporate level
8 and implemented them company-wide, regardless of their employees' assigned locations or
9 positions. Upon information and belief, Defendants set forth uniform policies and procedures
10 in several documents provided at an employee's time of hire.

11 26. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their corporate headquarters in Eden Prairie, Minnesota, which processes
13 payroll for all non-exempt, hourly paid employees working for Defendants at their various
14 locations and jobsites in California, including Plaintiff and other non-party Aggrieved
15 Employees. Based upon information and belief, Defendants issue the same formatted wage
16 statements to all non-exempt, hourly paid employees in California, irrespective of their work
17 locations. Upon information and belief, Defendants process payroll for departing employees
18 in the same manner throughout the State of California, regardless of the manner in which each
19 employee's employment ends.

20 27. Defendants continue to employ non-exempt or hourly paid employees in
21 California.

22 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
24 and advisors knowledgeable about California labor and wage law, employment and personnel
25 practices, and about the requirements of California law.

26 29. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
27 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
28 were not recorded.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive certain wages for overtime compensation and that they were not receiving certain
4 wages for overtime compensation.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 be paid at a regular rate of pay, and corresponding overtime rates of pay, that included as
8 eligible income all income derived from incentive pay, nondiscretionary bonuses, and/or other
9 forms of compensation, but failed to incorporate all forms of remuneration in calculating the
10 regular rate of pay for Plaintiff and other non-party Aggrieved Employees.

11 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive at least minimum wages for compensation and that they were not receiving at least
14 minimum wages for work that was required to be done off-the-clock. In violation of the
15 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
16 least minimum wages for work done off-the-clock.

17 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
20 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
21 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
22 other non-party Aggrieved Employees were not provided with all meal periods or payment of
23 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
24 uninterrupted, thirty (30) minute meal period.

25 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
28 payment of one (1) additional hour of pay at their regular rates of pay when they were not

1 authorized and permitted to take a compliant rest period. In violation of the California Labor
2 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted
3 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party
4 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
5 pay when they were not authorized and permitted to take a compliant rest period.

6 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive complete and accurate wage statements in accordance with California law. In
9 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
10 were not provided complete and accurate wage statements.

11 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that they had a duty to maintain accurate and complete payroll records in
13 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
14 knowingly, and intentionally failed to do so.

15 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 timely payment of wages during their employment. In violation of the California Labor Code,
18 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
19 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
20 premiums, within permissible time periods.

21 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 timely payment of all wages earned upon termination of employment. In violation of the
24 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
25 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
26 and/or meal and rest period premiums, within permissible time periods.

27 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, that Defendants knew or should have known that they had a duty to cover the costs

1 and expenses other non-party Aggrieved Employees incurred obtaining mandatory physical
2 examinations and/or drug tests, but failed to do so.

3 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain, for Plaintiff and other non-party
5 Aggrieved Employees, a temperature in work areas that provided reasonable comfort
6 consistent with industry-wide standards for the nature of the process and the work performed,
7 and to take all feasible means to reduce excessive heat or humidity to a degree providing
8 reasonable comfort, but failed to do so.

9 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 receive reimbursement for all business-related expenses and costs they incurred during the
12 course and scope of their employment and that they did not receive reimbursement of
13 applicable business-related expenses and costs incurred.

14 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
16 and other non-party Aggrieved Employees with written notice of the material terms of their
17 employment with Defendants as required by the California Wage Theft Prevention Act, but
18 failed to do so.

19 43. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate
21 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
22 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
23 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
24 that they were properly denied wages, all in order to increase Defendants' profits.

25 44. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

3 45. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
4 person who was employed by the alleged violator and against whom one or more of the
5 alleged violations was committed.”

6 46. Plaintiff and other current and former employees of Defendants are “aggrieved
7 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
8 or former employees and one or more of the alleged violations were committed against them.

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

- 12 (a) The aggrieved employee shall give written notice by online filing
13 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
14 to the employer of the specific provisions of the California Labor Code
15 alleged to have been violated, including the facts and theories to support
16 the alleged violations.
- 17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(a) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
21 employer and the aggrieved employee by certified mail that it does not
22 intend to investigate the alleged violation within sixty (60) calendar
23 days of the postmark date of the Employee’s Notice. Upon receipt of
24 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
25 five (65) calendar days of the postmark date of the Employee’s Notice,
26 the aggrieved employee may commence a civil action pursuant to
27 California Labor Code section 2699 to recover civil penalties in addition
28 to any other penalties to which the employee may be entitled.

1 48. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
2 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
3 provision other than those listed in Section 2699.5 after the following requirements have been
4 met:

- 5 (a) The aggrieved employee or representative shall give written notice by
6 online filing to the LWDA and by certified mail to the employer of the
7 specific provisions of the California Labor Code alleged to have been
8 violated (other than those listed in Section 2699.5), including the facts
9 and theories to support the alleged violation.
- 10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).
- 13 (c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice. The employer shall
15 give written notice by certified mail within that period of time to the
16 aggrieved employee or representative and the agency if the alleged
17 violation is cured, including a description of actions taken, and no civil
18 action pursuant to Section 2699 may commence. If the alleged violation
19 is not cured within the 33-day period, the employee may commence a
20 civil action pursuant to Section 2699.

21 49. On November 1, 2021, Plaintiff provided written notice by online filing to the
22 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
25 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
26 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
27 Plaintiff PAGA Case Number LWDA-CM-850597-21. A true and correct copy of Plaintiff's
28 written notice to the LWDA and Defendants dated November 1, 2021 is attached hereto as

1 “Exhibit 1.”

2 50. As of the filing date of this complaint, over 65 days have passed since Plaintiff
3 sent the written notice described above, and the LWDA has not responded that it intends to
4 investigate Plaintiff’s claims, and Defendants have not cured the violations.

5 51. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a),
8 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

9 52. Labor Code section 558(a) provides “[a]ny employer or other person acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial Welfare
12 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
15 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
16 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
17 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
18 as a private attorney general, seeks assessment and collection of civil penalties under Labor
19 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
20 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
21 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
22 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
23 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
24 applicable IWC Wage Order.

25 53. Defendants, at all times relevant to this complaint, were employers or persons
26 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
27 Employees’ rights by violating various sections of the California Labor Code as set forth
28 above.

54. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

56. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

57. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a) 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

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

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to Plaintiff and other non-party Aggrieved Employees, as set forth below;

- 1 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
2 the applicable IWC Wage Order for Defendants' failure to compensate
3 Plaintiff and other non-party Aggrieved Employees with at least
4 minimum wages for all hours worked, as set forth below;
- 5 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
6 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
7 and other non-party Aggrieved Employees with meal periods, as set
8 forth below;
- 9 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
10 applicable IWC Wage Order for Defendants' failure to authorize and
11 permit Plaintiff and other non-party Aggrieved Employees to take rest
12 periods, as set forth below;
- 13 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
14 IWC Wage Order for failure to provide accurate and complete wage
15 statements to Plaintiff and other non-party Aggrieved Employees, as set
16 forth below;
- 17 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
18 IWC Wage Order for failure to maintain payroll records, as set forth
19 below;
- 20 (g) Violation of Labor Code section 204 for failure to pay all earned wages
21 during employment, as set forth below;
- 22 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
23 earned wages upon termination, as set forth below;
- 24 (i) Violation of Labor Code section 222.5 for failure to compensate other
25 non-party Aggrieved Employees for mandatory physical examinations
26 and/or drug testing, as set forth below;
- 27 (j) Violation of Labor Code section 1198 for failure to maintain a
28 temperature in work areas that provided reasonable comfort consistent

1 with industry-wide standards for the nature of the process and the work
2 performed by Plaintiff and other non-party Aggrieved Employees, and
3 to take all feasible means to reduce excessive heat or humidity to a
4 degree providing reasonable comfort, as set forth below; and

5 (k) Violation of Labor Code section 2802 for failure to reimburse other
6 Plaintiff and non-party Aggrieved Employees for all business expenses
7 necessarily incurred, as set forth below; and

8 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
9 provide written notice of information material to Plaintiff's and other
10 non-party Aggrieved Employees' employment with Defendants, as set
11 forth below.

12 **FAILURE TO PAY OVERTIME**

13 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

14 59. Labor Code section 1198 makes it illegal to employ an employee under
15 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
16 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
17 shall be the . . . standard conditions of labor for employees. The employment of any employee
18 . . . under conditions of labor prohibited by the order is unlawful.”

19 60. California Labor Code section 1198 and the applicable IWC Wage Order
20 provide that it is unlawful to employ persons without compensating them at a rate of pay
21 either time-and-one-half or two-times that person's regular rate of pay, depending on the
22 number of hours worked by the person on a daily or weekly basis.

23 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
24 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
25 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
26 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
27 (40) hours in a workweek.

28 62. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
2 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
3 An employee's regular rate of pay includes all remuneration for employment paid to, or on
4 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

5 63. California Labor Code section 510 codifies the right to overtime compensation
6 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
7 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
8 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
9 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
10 in a day on the seventh (7th) day of work.

11 64. Defendants willfully failed to pay all overtime wages owed to Plaintiff and
12 other non-party Aggrieved Employees. During the relevant time period, Plaintiff and other
13 non-party Aggrieved Employees were not paid overtime premiums for all of the hours they
14 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in
15 excess of forty (40) hours in a week, because all hours that they worked were not recorded.

16 65. First, Defendants had, and continue to have, a company-wide policy and/or
17 practice of discouraging and impeding Plaintiff and other non-party Aggrieved Employees
18 from recording hours worked that were outside of their scheduled shifts, in order to limit the
19 amount of overtime employees could accrue. On information and belief, this policy of
20 limiting overtime, coupled with Defendants' practice of understaffing and assignment of
21 heavy workloads (see *infra*), led Plaintiff and other non-party Aggrieved Employees to work
22 off-the-clock before and after their scheduled shift times in order to complete their assigned
23 tasks. For example, once or twice per week, Plaintiff typically spent 5-30 minutes assisting
24 other employees with their workloads before being permitted to clock in for his scheduled
25 shift. In addition, once or twice per week, Plaintiff was required to clock out and continue
26 working for up to half an hour per instance, taking out trash, moving forklifts or items, or
27 waiting for another employee to arrive for the following shift, before being able to leave for
28 the day. Plaintiff and other non-party Aggrieved Employees were reprimanded by

1 management if they attempted to clock in prior to their scheduled shift times or to clock back
2 in after their scheduled shifts had ended in order to account for time worked off-the-clock.

3 66. Second, Defendants had, and continue to have, a company-wide policy and/or
4 practice of requiring Plaintiff and other non-party Aggrieved Employees to perform tasks off-
5 the-clock, such as responding to phone communications regarding work-related matters and
6 reviewing training or safety materials. For example, Plaintiff and other non-party Aggrieved
7 Employees were required to use their personal mobile devices to complete their work-related
8 duties, such as communicating with supervisors and other employees regarding the status of
9 orders. Plaintiff would spend on average one (1) hour per week off-the-clock answering
10 phone calls about glass orders, location of materials, and scheduling requests and receiving
11 text messages regarding formulas that he had to input into his work computer. As a further
12 example, a few times a month, Defendants' management required Plaintiff to review training
13 materials or new safety guidelines outside of his scheduled shifts. Plaintiff was explicitly
14 instructed by management to review those materials on his own time, which would take him
15 3-5 minutes each time to review. Defendants failed to track this time Plaintiff and other non-
16 party Aggrieved Employees spent working off-the-clock, and thus, Plaintiff and other non-
17 party Aggrieved Employees received no compensation for this time.

18 67. Third, upon information and belief, Defendants had, and continue to have, a
19 company-wide policy and/or practice of understaffing their facilities. Defendants' continuous
20 understaffing combined with strict production and order fulfillment deadlines resulted in a
21 failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal
22 period coverage. Defendants also had a practice of failing to adhere to a schedule of meal
23 periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be
24 relieved of their duties for compliant meal periods. As a result of this lack of meal period
25 coverage, Plaintiff and other non-party Aggrieved Employees were not always afforded 30-
26 minute meal periods during shifts when they were entitled to receive a meal period. Also,
27 Defendants' management would interrupt Plaintiff during his unpaid meal periods in order to
28 discuss which orders have been fulfilled to ensure employees were meeting production

1 deadlines given the limited workforce available. Thus, Plaintiff and other non-party
2 Aggrieved Employees missed and/or had meal periods interrupted or cut short in order to
3 complete their assigned workloads and meet production requirements. Defendants did not pay
4 Plaintiff and other non-party Aggrieved Employees for the time they continued to perform
5 tasks during meal periods.

6 68. Additionally, because Defendants frowned upon employees accruing meal
7 period penalties, Defendants' management pressured Plaintiff and other non-party Aggrieved
8 Employees to clock out for meal periods and/or adjusted employee time records to reflect
9 compliant meal periods, regardless of whether they had actually received a compliant meal
10 period. For example, Plaintiff was pressured by Defendants' management to clock out and
11 record compliant meal periods on shifts when he had not, in fact, received a compliant meal
12 period. Additionally, Plaintiff and other non-party Aggrieved Employees were instructed not
13 to clock out and allow management to input the time if a meal period was not going to be
14 timely or compliant.

15 69. Furthermore, Defendants' company-wide timekeeping system prevented
16 Plaintiff and other non-party Aggrieved Employees from recording all hours worked when
17 their meal periods were shortened or interrupted, because the system locked out Plaintiff and
18 other non-party Aggrieved Employees once they clocked out for a meal period, and would not
19 permit them to clock back in from a meal period before 30 minutes had elapsed. Thus,
20 Defendants did not record all hours worked during meal periods and Plaintiff and other non-
21 party Aggrieved Employees performed work during meal periods for which they were not
22 paid.

23 70. Defendants knew or should have known that, as a result of these company-wide
24 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
25 their assigned duties off-the-clock before and after their shifts and/or during meal periods, and
26 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
27 and other non-party Aggrieved Employees regularly worked shifts of eight (8) hours a day or
28 more, or forty (40) hours a week or more, much of this off-the-clock work qualified for

1 overtime premium pay.

2 71. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
3 Employees the correct overtime rate for the recorded overtime hours that they generated. In
4 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
5 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
6 However, in violation of the California Labor Code, Defendants failed to incorporate all
7 remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation
8 of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore,
9 during times when Plaintiff and other non-party Aggrieved Employees worked overtime and
10 received these other forms of pay, Defendants failed to pay all overtime wages by paying a
11 lower overtime rate than required.

12 72. For example, Defendants paid Plaintiff and other non-party Aggrieved
13 Employees incentive pay and nondiscretionary bonuses related to the company and
14 department meeting certain performance metrics. On information and belief, these
15 nondiscretionary bonuses and/or incentive payments were listed on Plaintiff's and other non-
16 party Aggrieved Employees' wage statements as "PS Gross Wages." During pay periods that
17 Plaintiff and other non-party Aggrieved Employees were paid overtime wages, Defendants
18 failed to incorporate the incentive pay and/or nondiscretionary bonuses into Plaintiff's and
19 other non-party Aggrieved Employees' regular rate of pay and, as a result, paid them at
20 incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid
21 Plaintiff and other non-party Aggrieved Employees 1.5 times their hourly rate of pay instead
22 of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the overtime
23 rates of pay based on all remuneration paid has resulted in an underpayment of overtime
24 wages to Plaintiff and other non-party Aggrieved Employees on a company-wide basis.

25 73. As an example, for the pay period ending on November 21, 2020, Plaintiff
26 earned incentive pay and/or a nondiscretionary bonus of \$912.00. During this same pay
27 period, Plaintiff incurred overtime. However, Plaintiff's overtime rate of pay did not
28 incorporate the nondiscretionary bonus and/or incentive pay. Instead, Defendants only paid

1 Plaintiff for overtime work based upon his straight hourly rate of pay of \$15.00, paying him
2 \$22.50 per hour (\$15.00 x 1.5) for overtime he incurred. Therefore, during times when
3 Plaintiff and other non-party Aggrieved Employees worked overtime and received incentive
4 pay, nondiscretionary bonuses, and/or other forms of remuneration, Defendants failed to pay
5 all overtime wages by paying lower overtime rates than required.

6 74. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
7 the balance of overtime compensation as required by California law, violates the provisions of
8 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
9 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
10 558 and/or 2699(a), (f), and (g).

11 **FAILURE TO PAY MINIMUM WAGES**

12 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

13 75. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
14 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
15 to be paid to employees, and the payment of a wage less than the minimum so fixed is
16 unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 order as "the
17 time during which an employee is subject to the control of an employer, and includes all the
18 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
19 Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

20 76. As stated above, due to Defendants' restrictions on overtime accrual,
21 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
22 for actual hours worked before and after scheduled shifts, because these hours were not
23 accurately recorded. Because Defendants discouraged and impeded Plaintiff and other non-
24 party Aggrieved Employees from recording hours worked that were outside of their scheduled
25 shifts, Plaintiff and other non-party Aggrieved Employees were required to work off-the-clock
26 before and/or after their scheduled shift start and end times assisting other employees, taking
27 out trash, moving forklifts or items, waiting for another employee to arrive before being able
28 to leave, communicating with supervisors or other employees on their personal mobile devices

1 regarding work-related matters, and reviewing training and safety materials.

2 77. Additionally, as set forth above, due to Defendants' uniform practice of
3 understaffing, assignment of heavy workloads, pressure to meet deadlines and production
4 requirements, failure to adhere to a schedule of meal periods, and resultant lack of meal period
5 coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking all
6 uninterrupted meal periods to which they were entitled and were required to work off-the-
7 clock. Moreover, as stated, in order to prevent employees from accruing meal period
8 penalties, Defendants' management pressured Plaintiff and other non-party Aggrieved
9 Employees to clock out for meal periods and/or adjusted employee time records to reflect
10 compliant meal periods, but required them to continue working, time for which they were not
11 paid. Also, as set forth above, during the relevant time period, Defendants systematically
12 failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked
13 during unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff and
14 other non-party Aggrieved Employees for 30 minutes when they clocked out for a meal
15 period. Thus, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved
16 Employees for actual hours worked during unpaid meal periods because these hours were not
17 always correctly recorded.

18 78. Moreover, Defendants maintained and implemented a company-wide policy of
19 requiring employees to travel to a medical facility on their own time and using their own
20 personal vehicles or alternate transportation to undergo mandatory drug testing and/or
21 physical examinations. At all times, Defendants were in control of scheduling the date and
22 time for the testing and/or physical examinations, selecting the provider or facility where the
23 testing and/or physical examinations were to take place, and determining the scope of the
24 testing and/or physical examinations. Defendants gave other non-party Aggrieved Employees
25 strict instructions to undergo drug testing and/or physical examinations, and other non-party
26 Aggrieved Employees underwent the testing and/or examinations for the sole benefit of
27 Defendants. Other non-party Aggrieved Employees were required to travel in their own
28 personal vehicles or obtain alternate transportation and spend time undergoing Defendants'

1 mandatory drug tests and/or physical examinations. However, Defendants did not compensate
2 other non-party Aggrieved Employees for the time they spent traveling to and from the
3 medical facilities and undergoing the mandatory drug testing and/or physical examinations.

4 79. Thus, Defendants did not pay at least minimum wages for all hours worked by
5 Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock
6 hours did not qualify for overtime premium payment, Defendants did not pay at least
7 minimum wages for those hours worked off-the-clock in violation of California Labor Code
8 sections 1182.12, 1194, 1197, and 1198.

9 80. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
10 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
11 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
12 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

15 81. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
17 other non-party Aggrieved Employees' employment by Defendants.

18 82. At all relevant times herein set forth, California Labor Code section 512(a)
19 provides that an employer may not require, cause, or permit an employee to work for a period
20 of more than five (5) hours per day without providing the employee with a meal period of not
21 less than thirty (30) minutes, except that if the total work period per day of the employee is
22 not more than six (6) hours, the meal period may be waived by mutual consent of both the
23 employer and the employee. Under California law, first meal periods must start after no more
24 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

25 83. At all relevant times herein set forth, California Labor Code sections 226.7,
26 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
27 meal period mandated by an applicable order of the IWC.

28 84. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and

1 1198, and the applicable IWC Wage Order also require employers to provide a second meal
2 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
3 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
4 the total hours worked is no more than twelve (12) hours, the second meal period may be
5 waived by mutual consent of the employer and the employee only if the first meal period was
6 not waived.

7 85. As set forth above, during the relevant time period, Defendants had, and
8 continue to have, a company-wide policy and/or practice of understaffing while assigning
9 heavy workloads, including pressure to meet deadlines and production requirements. Further,
10 Defendants had a company-wide practice of failing to adhere to a schedule for meal periods,
11 resulting in Plaintiff and other non-party Aggrieved Employees having their meal periods cut
12 short to return to work or waiting extended periods of time before taking meal periods, due to
13 the heavy workload and lack of coverage. Defendants' practices and policies prevented
14 Plaintiff and other non-party Aggrieved Employees from taking all compliant meal periods to
15 which they were entitled.

16 86. As a result, Plaintiff and other non-party Aggrieved Employees would be
17 forced to work in excess of five (5) hours before taking a meal period and, at times, had their
18 meal periods cut short and/or had to forgo their meal periods altogether. For example,
19 Plaintiff took his meal periods late, after the end of his sixth or seventh hour of work, in order
20 to meet production deadlines, ensure orders were ready for truck drivers to pick up, and finish
21 his assigned duties. Also, Defendants' management pressured Plaintiff and other non-party
22 Aggrieved Employees to complete production orders on time due to hefty monetary penalties
23 Defendants could incur if orders were not fulfilled in a timely manner. In addition, Plaintiff's
24 meal periods were interrupted or cut short by five (5) minutes per instance by Defendants'
25 management to discuss the status of certain orders, which sometimes required Plaintiff to
26 return to his workstation so he could provide answers.

27 87. Furthermore, as stated, because Defendants frowned upon employees accruing
28 meal period penalties, Defendants' management pressured Plaintiff and other non-party

1 Aggrieved Employees to clock out for meal periods and/or adjusted Plaintiff's and other non-
2 party Aggrieved Employees' time records to reflect compliant meal periods, regardless of
3 whether they had received a compliant meal period, in order to strictly limit meal penalties
4 that would need to be paid by Defendants. For example, Plaintiff was required to clock out
5 for his meal period to record that he had received compliant meal periods on shifts when he
6 had not, in fact, received these timely meal periods. Moreover, if Plaintiff and other non-party
7 Aggrieved Employees were not going to be able to clock out for their meal periods in timely
8 fashion due to their heavy workload, management instructed employees not to clock out at all
9 and allow management to input the times themselves to appear as though compliant meal
10 periods were provided.

11 88. Also, Defendants' company-wide timekeeping system prevented Plaintiff and
12 other non-party Aggrieved Employees from recording all hours worked when their meal
13 periods were shortened or interrupted, because the system locked out Plaintiff and other non-
14 party Aggrieved Employees once they clocked out for a meal period, and would not permit
15 them to clock back in from a meal period before 30 minutes had elapsed.

16 89. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
17 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
18 hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) or
19 more hours per day but was not provided an uninterrupted second 30-minute meal period.
20 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
21 days that they were entitled to meal periods and were not relieved of all duties.

22 90. Additionally, Defendants had a company-wide policy of requiring all
23 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
24 the position that non-exempt, hourly paid employees had waived their rights to first and/or
25 second meal periods for the entirety of their employment and, on that basis, did not provide
26 them with all meal periods to which they were entitled. Defendants' company-wide use of
27 blanket meal period waivers, signed at or near the time of hire, and imposition on employees
28 to revoke the waivers in writing, discouraged and impeded Plaintiff and other non-party

1 Aggrieved Employees from taking all meal periods to which they were entitled. And,
2 Defendants' presumption that meal periods would not be provided for shifts in excess of five
3 (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than
4 twelve (12) hours, due to blanket meal period waivers, discouraged Plaintiff and other non-
5 party Aggrieved Employees from taking all meal periods.

6 91. Furthermore, an employer's obligation to provide a meal period is only
7 "triggered" when the employer "employs an employee for a work period of more than five
8 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
9 anyone to work for a full five hours, its meal break obligation is triggered.").

10 [A]fter the meal break obligation is triggered . . . an employer is put to a
11 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually
12 agreed-upon waiver if one hour or less will end the shift; or (3) obtain
13 written agreement to an on-duty meal period if circumstances permit.
Failure to do one of these will render the employer liable for premium pay.

14 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). The fact that
15 Defendants require aggrieved employees to sign meal waivers simultaneously at or near their
16 time of hire (as opposed to on a specific work day) renders them invalid and unenforceable,
17 because Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees
18 with meal periods did not arise until it had employed them for a full five (5) hours.

19 92. Defendants knew or should have known that as a result of their non-compliant
20 policies and practices, that Plaintiff and other non-party Aggrieved Employees were not
21 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
22 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
23 Employees meal period premiums when meal periods were missed, late, short, and/or
24 interrupted.

25 93. Furthermore, Defendants engaged in a company-wide practice and/or policy of
26 not paying all meal period premiums owed when compliant meal periods were not provided.
27 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
28 have not received premium pay for all missed, late, and interrupted meal periods.

1 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved
2 Employees meal period premium pay for missed, late, and interrupted meal periods,
3 Defendants did not pay Plaintiff and other non-party Aggrieved Employees at the correct rate
4 of pay for premiums because Defendants systematically failed to include all forms of
5 compensation, such as, incentive pay, nondiscretionary bonuses, and/or other forms of
6 remuneration, into the calculation of the regular rate of pay.

7 94. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
8 Employees compliant meal periods and failed to pay the full meal period premiums due.
9 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
10 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
11 therefore entitled to recover civil penalties pursuant to California Labor Code sections 558
12 and/or 2699(a), (f), and (g).

13 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

15 95. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
17 non-party Aggrieved Employees' employment by Defendants.

18 96. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3 ½) hours.

24 97. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest
27 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
28 employer must "relinquish any control over how employees spend their break time, and

1 relieve their employees of all duties—including the obligation that an employee remain on
2 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
3 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

4 98. Pursuant to the applicable IWC Wage Order and California Labor Code section
5 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
6 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
7 required rest period was not authorized and permitted.

8 99. During the relevant time period, Defendants regularly failed to authorize and
9 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
10 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
11 Defendants’ company-wide practices, including understaffing and the assignment of heavy
12 workloads and strict production deadlines, prevented Plaintiff and other non-party Aggrieved
13 Employees from being relieved of all duty in order to take compliant rest periods.
14 Additionally, Defendants also failed to adhere to a schedule of rest periods, which, coupled
15 with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and
16 other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

17 100. Furthermore, during the relevant time period, Defendants maintained and
18 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
19 and other non-party Aggrieved Employees remain on the work premises during their rest
20 periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from
21 leaving the premises during rest periods, they were denied the ability to use their rest periods
22 freely for their own purposes, such as walking over to the nearby convenience store to
23 purchase a cold drink because it was hot inside the factory. Thus, Defendants effectively
24 maintained control over Plaintiff and other non-party Aggrieved Employees during rest
25 periods.

26 101. As a result, Plaintiff and other non-party Aggrieved Employees would work
27 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being
28 permitted and authorized to take all ten (10) minute rest periods to which they were entitled.

1 For example, Plaintiff missed rest periods at least three (3) times per week because of the
2 heavy workload and lack of coverage. In addition, at least three (3) times per week, his
3 second rest periods would be interrupted due to management asking him questions regarding
4 the work he completed that day or requesting that he get back to work in order to address a
5 production issue or to complete an order. Further, Plaintiff did not receive a third rest period
6 when he worked shifts in excess of 10 hours.

7 102. Defendants also have engaged in a company-wide practice and/or policy of not
8 paying all rest period premiums owed when compliant rest periods are not authorized or
9 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
10 Employees have not received premium pay for all missed rest periods. Alternatively, to the
11 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
12 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
13 other non-party Aggrieved Employees at the correct rate of pay for premiums because
14 Defendants failed to include all forms of compensation, such as incentive pay,
15 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

16 103. Defendants' conduct violates the applicable IWC Wage Order and California
17 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
18 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
19 558 and/or 2699(a), (f), and (g).

20 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
21 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

22 104. At all relevant times herein, California Labor Code section 226(a) provides that
23 every employer shall furnish each of his or her employees an accurate and complete itemized
24 wage statement in writing, including, but not limited to, the name and address of the legal
25 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
26 applicable rates of pay.

27 105. During the relevant time period, Defendants have knowingly and intentionally
28 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and

1 inaccurate wage statements. For example, Defendants issued uniform wage statements to
2 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
3 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
4 the pay period, including rates of pay for overtime wages and/or meal and rest period
5 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
6 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

7 106. Because Defendants did not record the time Plaintiff and other non-party
8 Aggrieved Employees spent working off-the-clock and deducted time from their records for
9 meal periods that were interrupted and/or missed (and therefore time for which they should
10 have been paid), Defendants did not list the correct amount of gross wages and net wages
11 earned by Plaintiff and other non-party Aggrieved Employees, in compliance with section
12 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
13 number of hours worked by Plaintiff and other non-party Aggrieved Employees in violation of
14 section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay
15 period and the corresponding accurate number of hours worked at each hourly rate, in
16 violation of section 226(a)(9).

17 107. In addition, because Defendants did not calculate Plaintiff's other non-party
18 Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages
19 and/or meal and rest period premiums, Defendants did not list the correct amount of gross
20 wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in
21 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly
22 rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or
23 meal and rest period premiums in violation of section 226(a)(9).

24 108. The wage statement deficiencies also include, without limitation, failing to list
25 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
26 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
27 for which aggrieved employees were paid; failing to list the name of the employee and only
28 the last four digits of his or her social security number or an employee identification number

1 other than a social security number; failing to list the name and address of the legal entity that
2 is the employer; and/or failing to state all hours worked as a result of not recording or stating
3 hours worked off-the-clock.

4 109. California Labor Code section 1174(d) provides that “[e]very person employing
5 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
6 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
7 plants or establishments at which employees are employed, payroll records showing the hours
8 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
9 applicable piece rate paid to, employees employed at the respective plants or
10 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
11 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
12 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
13 as a result of failing to record the off-the-clock hours that they worked.

14 110. California Labor Code section 1198 provides that the maximum hours of work
15 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
16 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
17 employment of any employees for longer hours than those fixed by the order or under
18 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
19 Wage Order, employers are required to keep accurate time records showing when the
20 employee begins and ends each work period and meal period. During the relevant time
21 period, Defendants failed, on a company-wide basis, to keep accurate records of work and
22 meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in
23 violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or
24 policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records by
25 recording that compliant meal periods were taken regardless of if or when meal periods were
26 actually taken, and thereby failed to keep accurate records of meal start and end times for
27 Plaintiff and other non-party Aggrieved Employees. Furthermore, in light of Defendants’
28 failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute

1 meal periods to which they were entitled, Defendants kept no records of meal start and end
2 times for second meal periods.

3 111. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
4 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
5 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

6 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

7 **VIOLATION OF LABOR CODE SECTION 204**

8 112. At all relevant times herein set forth, California Labor Code section 204
9 requires that all wages earned by any person in any employment between the 1st and the 15th
10 days, inclusive, of any calendar month, other than those wages due upon termination of an
11 employee, are due and payable between the 16th and the 26th day of the month during which
12 the labor was performed. Labor Code section 204 further provides that all wages earned by
13 any person in any employment between the 16th and the last day, inclusive, of any calendar
14 month, other than those wages due upon termination of an employee, are due and payable
15 between the 1st and the 10th day of the following month.

16 113. At all relevant times herein, California Labor Code section 204 also requires
17 that all wages earned for labor in excess of the normal work period shall be paid no later than
18 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
19 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
20 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
21 more than seven (7) calendar days following the close of the payroll period.

22 114. During the relevant time period, Defendants willfully failed to pay Plaintiff and
23 other non-party Aggrieved Employees all wages due to them within any time period specified
24 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
25 wages, and/or meal and rest period premiums, within the time periods specified by California
26 Labor Code section 204.

27 115. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
28 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

10 117. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
11 Employees who are no longer employed by Defendants their earned and unpaid wages set
12 forth above, including but not limited to, overtime wages, minimum wages, and/or meal and
13 rest period premiums, either at the time of discharge or within seventy-two (72) hours of their
14 leaving Defendants' employ.

15 118. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
16 who are no longer employed by Defendants their wages earned and unpaid at the time of
17 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
18 California Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved
19 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
20 256 and/or 2699(a), (f), and (g).

21 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATIONS**

22 **VIOLATION OF LABOR CODE SECTION 222.5**

23 119. At all relevant times herein, California Labor Code section 222.5 requires
24 employers to pay for the costs an employee incurs for obtaining any required medical or
25 physical examination.

26 120. During the relevant time period, Defendants implemented, on a company-wide
27 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
28 mandatory drug testing and/or physical examinations, but required them to do so at their own

1 expense. As stated, Defendants had a company-wide policy requiring that other non-party
2 Aggrieved Employees travel to a specified medical facility on their own time and use their
3 own means of transportation to undergo drug testing and/or physical examinations. At all
4 times, Defendants were in control of scheduling the date and time for the testing and/or
5 examinations, selecting the provider/facility where the testing and/or examinations were to
6 take place, and determining the scope of the testing and/or examinations. However,
7 Defendants did not compensate other non-party Aggrieved Employees for the time they spent
8 traveling to and from the medical facilities, for the time they spent undergoing the drug testing
9 and/or physical examinations, or reimburse them for the travel expenses they incurred getting
10 to and from the medical facilities.

11 121. Defendants' policy and/or practice of not paying for all costs other non-party
12 Aggrieved Employees incurred obtaining mandatory drug testing and/or physical
13 examinations is in violation of California Labor Code section 222.5. Other non-party
14 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
15 sections 2699(a), (f), and (g).

16 **FAILURE TO MAINTAIN WORK TEMPERATURE PROVIDING REASONABLE**
17 **COMFORT**

18 **VIOLATION OF LABOR CODE SECTION 1198**

19 122. At all relevant times, California Labor Code section 1198 dictates that no
20 employer may employ an employee under conditions of labor that are prohibited by the
21 applicable IWC Wage Order. California Labor Code section 1198 further requires that ". . .
22 the standard conditions of labor fixed by the commission shall be the . . . standard conditions
23 of labor for employees. The employment of any employee . . . under conditions of labor
24 prohibited by the order is unlawful."

25 123. California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide
26 that "[t]he temperature maintained in each work area shall provide reasonable comfort
27 consistent with industrywide standards for the nature of the process and the work
28 performed. . . . If excessive heat or humidity is created by the work process, the employer

1 shall take all feasible means to reduce such excessive heat or humidity to a degree providing
2 reasonable comfort.” California law requires an employer to endeavor to provide a safe and
3 healthy workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section
4 6720 required the California Division of Occupational Safety and Health (“OSHA”) to
5 propose an indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of
6 April 22, 2019, applies its proposed regulations to “all indoor work areas where the
7 temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

8 124. Upon information and belief, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11010(15), because
10 Defendants failed to maintain a temperature in work areas that provided reasonable comfort
11 consistent with industry-wide standards for the nature of the process and the work performed
12 and failed to take all feasible means to reduce excessive heat or humidity to a degree
13 providing reasonable comfort.

14 125. During the relevant time period, Plaintiff and other non-party Aggrieved
15 Employees were subjected to excessive heat equaling or exceeding 100 degrees Fahrenheit.
16 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with
17 reasonable comfort by maintaining the indoor temperature within the range of industry
18 standards by providing adequate air conditioning, in violation of California Labor Code
19 section 1198 and IWC Wage Order 1-2001, subdivision 15. For example, Plaintiff and other
20 non-party Aggrieved Employees who were present on Defendants’ worksites, where
21 employees operated furnaces and manufactured glass, were not provided air conditioning and
22 would be required to work indoors at 100 degrees Fahrenheit or more. Plaintiff experienced
23 constant headaches due to excessive heat during and after his shifts.

24 126. Accordingly, Defendants failed to maintain, in its work areas, a temperature
25 providing reasonable comfort for its employees, including Plaintiff and other non-party
26 Aggrieved Employees, in violation of California Labor Code section 1198 and California
27 Code of Regulations, Title 8, section 11010(15). Plaintiff and other non-party Aggrieved
28 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections

1 2699(a), (f), and (g).

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **VIOLATION OF LABOR CODE SECTION 2802**

4 127. At all times herein set forth, California Labor Code section 2802 provides that
5 an employer must reimburse employees for all necessary expenditures and losses incurred by
6 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
7 to prevent employers from passing off their cost of doing business and operating expenses on
8 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
9 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen the
10 employer requires the use of tools or equipment or they are necessary to the performance of a
11 job, such tools and equipment shall be provided and maintained by the employer, except that
12 an employee whose wages are at least two (2) times the minimum wage may provide and
13 maintain hand tools and equipment customarily required by the particular trade or craft."

14 128. First, during the relevant time period, Defendants had a company-wide policy
15 of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
16 mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but
17 Defendants failed to reimburse them for the costs of their work-related mobile device
18 expenses. For example, Plaintiff and other non-party Aggrieved Employees were required to
19 use their personal cellular phones to complete their work-related tasks, such as receiving and
20 reviewing text messages from management with production formulas that needed to be input
21 in the computer. Although Defendants required Plaintiff and other non-party Aggrieved
22 Employees to utilize their personal mobile devices and/or mobile data to carry out their work-
23 related responsibilities, Defendants failed to reimburse them for this cost.

24 129. Second, during the relevant time period, Defendants, on a company-wide basis,
25 required Plaintiff and other non-party Aggrieved Employees to wear uniform items, including
26 a turtleneck sweater, bump cap, glasses/goggles, and gloves for enhanced protection, but
27 failed to provide Plaintiff and other non-party Aggrieved Employees with uniform laundering
28 services or reimburse them for cleaning expenses incurred. Additionally, Defendants did not

1 provide its employees with sufficient uniforms to wear for their shifts throughout the week.
2 For example, Defendants only provided Plaintiff and other non-party Aggrieved Employees
3 with one (1) turtleneck sweater at the beginning of his employment. Because Defendants
4 failed to provide Plaintiff and other non-party Aggrieved Employees with an adequate number
5 of uniform items in relation to their scheduled shifts and for the tasks they were required to
6 perform, Plaintiff and other non-party Aggrieved Employees were forced to wash their
7 uniforms more frequently than they would otherwise do laundry, and incur expenses in doing
8 so. For example, due to the nature of their work, Plaintiff's and other non-party Aggrieved
9 Employees' uniform sweaters would attract and acquire very small glass particles over the
10 course of their shifts. As a result, Plaintiff was forced to wash his uniform sweaters separately
11 from any other items to prevent glass particles from getting into his regular clothes during a
12 wash, thus incurring additional utility and laundry expenses. Thus, Defendants failed to
13 maintain the uniforms they required Plaintiff and other non-party Aggrieved Employees to
14 wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

15 130. Third, as stated, Defendants had a company-wide policy of requiring other non-
16 party Aggrieved Employees to travel to medical facilities on their own time and using their
17 personal vehicles or obtain alternate transportation to obtain mandatory drug testing and/or
18 physical examinations, but did not reimburse them for their travel expenses, including
19 mileage. At all times, Defendants were in control of scheduling the date and time for the
20 testing and/or physical examinations, selecting the provider or facility where the testing and/or
21 physical examinations were to take place, and determining the scope of the testing and/or
22 physical examinations. Defendants gave other non-party Aggrieved Employees strict
23 instructions to obtain drug testing and/or physical examinations, and other non-party
24 Aggrieved Employees underwent the testing and/or physical examinations for the sole benefit
25 of Defendants. Although Defendants required other non-party Aggrieved Employees to use
26 their own vehicles or obtain alternate transportation to undergo drug testing and/or physical
27 examinations, Defendants never reimbursed them for their travel expenses.

28 131. Defendants could have provided Plaintiff and other non-party Aggrieved

1 Employees with the actual tools for use on the job, such as company mobile devices and
2 vehicles, as well as an adequate number of uniform items or access to laundering services. Or,
3 Defendants could have reimbursed employees for their mobile device usage, mileage, travel,
4 and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants
5 passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At
6 all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

7 132. Defendants' company-wide policy and/or practice of passing on their operating
8 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
9 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
10 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
12 **EMPLOYMENT**

13 **VIOLATION OF LABOR CODE SECTION 2810.5**

14 133. California's Wage Theft Prevention Act was enacted to ensure that employers
15 provide employees with basic information material to their employment relationship at the
16 time of hiring, and to ensure that employees are given written and timely notice of any
17 changes to basic information material to their employment. Codified at California Labor
18 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
19 employer must provide written notice to employees containing basic and material payroll
20 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
21 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
22 overtime, the regular payday designated by the employer, and any allowances claims as part
23 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
24 (C).

25 134. During the relevant time period, Defendants failed to provide Plaintiff and
26 other non-party Aggrieved Employees with written notice that lists all the requisite
27 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

28 135. Defendants' failure to provide Plaintiff and other non-party Aggrieved

1 Employees with written notice of basic information regarding their employment with
2 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party
3 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
4 section 2699(a), (f), and (g).

5 **REQUEST FOR JURY TRIAL**

6 Plaintiff requests a trial by jury.

7 **PRAYER FOR RELIEF**

8 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
9 judgment against Defendants, jointly and severally, as follows:

10 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
11 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

13 2. That the Court declare, adjudge and decree that Defendants violated the
14 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
15 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
16 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
17 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
18 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
19 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
20 earned wages upon termination); 204 (by failing to timely pay all earned wages during
21 employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or
22 drug testing); 1198 and the applicable IWC Wage Order (by failing to maintain reasonable
23 work temperature); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing
24 to provide written notice of information material to employment);

25 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
26 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
27 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and
28 2810.5;

1 4. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
4 1197, 1198, 2802, and 2810.5.

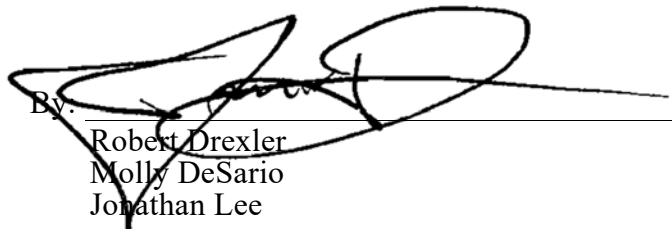
5 5. For pre-judgment and post-judgment interest as provided by law; and

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

8 Dated: January 6, 2022

Respectfully submitted,

Capstone Law APC

10
11 By: 
12 Robert Drexler
13 Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Bret Mercado

Exhibit 1

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

November 1, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Bret Mercado v. Cardinal Glass Industries, Inc., et al.*

Dear PAGA Administrator:

This office represents Bret Mercado in connection with his claims under the California Labor Code. Mr. Mercado was an employee of CARDINAL GLASS INDUSTRIES, INC.; CARDINAL CG COMPANY; and/or CARDINAL CT COMPANY. For the purpose of this letter, Mr. Mercado collectively refers to these entities as “CARDINAL.”

The employers may be contacted directly at the addresses below:

CARDINAL GLASS INDUSTRIES, INC.
775 PRAIRIE CENTER DRIVE, SUITE 200
EDEN PRAIRIE MN 55344

CARDINAL CG COMPANY
775 PRAIRIE CENTER DRIVE, SUITE 200
EDEN PRAIRIE MN 55344

CARDINAL CT COMPANY
775 PRAIRIE CENTER DRIVE, STE #200
EDEN PRAIRIE MN 55344

Mr. Mercado intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Mercado seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CARDINAL as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CARDINAL employed Mr. Mercado as hourly paid, non-exempt employee from approximately November 2019 to December 2020. Mr. Mercado worked for CARDINAL as a Glass Handler and then as a Furnace Operator at its facility in Los Angeles, California. During his employment, Mr. Mercado typically worked eight (8) or more hours per day and five (5) or more days per week. At the time Mr. Mercado’s employment with CARDINAL ended, he earned \$15.00 per hour. His job

duties included operating the furnace, measuring and labeling glass components, preparing quality reports, and cleaning and maintaining the premises.

CARDINAL committed one or more of the following Labor Code violations against Mr. Mercado, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

CARDINAL’s Company-Wide and Uniform Payroll and HR Practices

CARDINAL GLASS INDUSTRIES, INC. is a Minnesota corporation, while CARDINAL CT COMPANY and CARDINAL CG COMPANY are Wisconsin corporations. Together, they develop and manufacture residential glass for windows and doors. CARDINAL operates four (4) manufacturing plants in California. Upon information and belief, CARDINAL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Eden Prairie, Minnesota, for all non-exempt, hourly paid employees working for CARDINAL in California, including Mr. Mercado and other aggrieved employees. At all relevant times, CARDINAL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Mercado and other aggrieved employees, regardless of its location or position.

Upon information and belief, CARDINAL maintains a centralized Payroll department at its corporate headquarters in Eden Prairie, Minnesota, which processes payroll for all nonexempt, hourly paid employees working for CARDINAL in California, including Mr. Mercado and other aggrieved employees. Further, CARDINAL issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Mr. Mercado and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, CARDINAL utilized the same methods and formulas when calculating wages due to Mr. Mercado and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Mercado’s experience and counsel’s review of those records currently available relating to Mr. Mercado’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Mercado reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

CARDINAL willfully failed to pay all overtime wages owed to Mr. Mercado and other aggrieved employees. During the relevant time period, Mr. Mercado and other aggrieved employees were not paid overtime premiums for all of the hours they 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, because all hours that they worked were not recorded.

First, CARDINAL had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Mercado and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with CARDINAL's practice of understaffing and assignment of heavy workloads (see *infra*), led Mr. Mercado and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, once or twice per week, Mr. Mercado typically spent 5-30 minutes assisting other employees with their workloads before being permitted to clock in for his scheduled shift. In addition, once or twice per week, Mr. Mercado was required to clock out and continue working for up to half an hour per instance, taking out trash, moving forklifts or items, or waiting for another employee to arrive for the following shift, before being able to leave for the day. Mr. Mercado and other aggrieved employees were reprimanded by management if they attempted to clock in prior their scheduled shift times or to clock back in after their scheduled shifts had ended in order to account for time worked off-the-clock.

Second, CARDINAL had, and continues to have, a company-wide policy and/or practice of requiring Mr. Mercado and other aggrieved employees to perform tasks off-the-clock, such as responding to phone communications regarding work-related matters and reviewing training or safety materials. For example, Mr. Mercado and other aggrieved employees were required to use their personal mobile devices to complete their work-related duties, such as communicating with supervisors and other employees regarding the status of orders. Mr. Mercado would spend on average one (1) hour per week off-the-clock answering phone calls about glass orders, location of materials, and scheduling requests and receiving text messages regarding formulas that he had to input into his work computer. As a further example, a few times a month, CARDINAL's management required Mr. Mercado to review training materials or new safety guidelines outside of his scheduled shifts. Mr. Mercado was explicitly instructed by management to review those materials on his own time, which would take him 3-5 minutes each time to review. CARDINAL failed to track this time Mr. Mercado and other aggrieved employees spent working off-the-clock, and thus, Mr. Mercado and other aggrieved employees received no compensation for this time.

Third, upon information and belief, CARDINAL had, and continues to have, a company-wide policy and/or practice of understaffing its facilities. CARDINAL's continuous understaffing combined with strict production and order fulfillment deadlines resulted in a failure to provide Mr. Mercado and other aggrieved employees with adequate meal period coverage. CARDINAL also had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Mercado and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Mercado and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. Also, CARDINAL's management would interrupt Mr. Mercado during his unpaid meal periods in order to discuss which orders have been fulfilled to ensure employees were meeting production deadlines given the limited workforce available. Thus, Mr. Mercado and other aggrieved employees missed and/or had meal periods interrupted or cut short in order to complete their assigned workloads and

meet production requirements. CARDINAL did not pay Mr. Mercado and other aggrieved employees for the time they continued to perform tasks during meal periods.

Additionally, because CARDINAL frowned upon employees accruing meal period penalties, CARDINAL's management pressured Mr. Mercado and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period. For example, Mr. Mercado was pressured by CARDINAL's management to clock out and record compliant meal periods on shifts when he had not, in fact, received a compliant meal period. Additionally, Mr. Mercado and other aggrieved employees were instructed not to clock out and allow management to input the time if a meal period was not going to be timely or compliant.

Furthermore, CARDINAL's company-wide timekeeping system prevented Mr. Mercado and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Mercado and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, CARDINAL did not record all hours worked during meal periods and Mr. Mercado and other aggrieved employees performed work during meal periods for which they were not paid.

CARDINAL knew or should have known that as a result of these company-wide practices and/or policies, Mr. Mercado and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Mercado and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, CARDINAL did not pay Mr. Mercado and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, CARDINAL paid Mr. Mercado and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CARDINAL failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Mercado and other aggrieved employees worked overtime and received these other forms of pay, CARDINAL failed to pay all overtime wages by paying the hourly rate instead of the regular rate.

For example, CARDINAL paid Mr. Mercado and other aggrieved employees incentive pay and nondiscretionary bonuses related to the company and department meeting certain performance metrics. On information and belief, these nondiscretionary bonuses and/or incentive payments were listed on Mr. Mercado's and other aggrieved employees' wage statements as "PS Gross Wages." During pay periods that Mr. Mercado and other aggrieved employees were paid overtime wages, CARDINAL failed to incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Mercado's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, CARDINAL paid Mr. Mercado and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. CARDINAL's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Mercado and other aggrieved employees on a company-wide basis.

As an example, for the pay period ending on November 21, 2020, Mr. Mercado earned incentive pay and/or a nondiscretionary bonus of \$912.00. During this same pay period, Mr. Mercado incurred overtime. However, Mr. Mercado's overtime rate of pay does not incorporate the nondiscretionary bonus and/or incentive pay. Instead, CARDINAL only paid Mr. Mercado for overtime work based upon his straight hourly rate of pay of \$15.00, paying him \$22.50 per hour (\$15.00 x 1.5) for overtime he incurred. Therefore, during times when Mr. Mercado and other aggrieved employees worked overtime and received incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, CARDINAL failed to pay all overtime wages by paying lower overtime rates than required.

CARDINAL's failure to pay Mr. Mercado and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As stated above, due to CARDINAL's restrictions on overtime accrual, CARDINAL systematically failed to pay Mr. Mercado and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. As stated, because CARDINAL discouraged and impeded Mr. Mercado and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Mercado and other aggrieved employees were required to work off-the-clock before and/or after their scheduled shift start and end times assisting other employees, taking out trash, moving forklifts or items, waiting for another employee to arrive before being able to leave, communicating with supervisors or other employees on their personal mobile devices regarding work-related matters, and reviewing training and safety materials.

Additionally, as set forth above, due to CARDINAL's uniform practice of understaffing, assignment of heavy workloads, pressure to meet deadlines and production requirements, failure to adhere to a schedule of meal periods, and resultant lack of meal period coverage, Mr. Mercado and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, in order to prevent employees from accruing meal period penalties, CARDINAL's management pressured Mr. Mercado and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, during the relevant time period, CARDINAL systematically failed to pay Mr. Mercado and other aggrieved employees for actual hours worked during unpaid meal periods, because CARDINAL's timekeeping system locked out Mr. Mercado and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, CARDINAL systematically failed to

pay Mr. Mercado and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Moreover, CARDINAL maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, CARDINAL was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. CARDINAL gave other aggrieved employees strict instructions to undergo drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of CARDINAL. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing CARDINAL's mandatory drug tests and/or physical examinations. However, CARDINAL did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, CARDINAL did not pay at least minimum wages for all hours worked by Mr. Mercado and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CARDINAL did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CARDINAL regularly failed to pay at least minimum wages to Mr. Mercado and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, 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 an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, CARDINAL had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressure to meet deadlines and production requirements. Further, CARDINAL had a company-wide practice of failing to adhere to a schedule of meal periods, resulting in Mr. Mercado and other aggrieved employees having their meal periods cut short to return to work or waiting extended periods of time before taking meal periods, due to the heavy workload and lack of coverage. CARDINAL's practices and policies prevented Mr. Mercado and other aggrieved employees from taking all compliant meal periods to which they were entitled.

As a result, Mr. Mercado and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, Mr. Mercado took his meal periods late, after the end of his sixth or seventh hour of work, in order to meet production deadlines, ensure orders were ready for truck drivers to pick up, and finish his assigned duties. Also, CARDINAL's management pressured Mr. Mercado and other aggrieved employees to complete production orders on time due to hefty monetary penalties if orders were not fulfilled in a timely manner. In addition, Mr. Mercado's meal periods were interrupted or cut short by five (5) minutes per instance by CARDINAL's management to discuss the status of certain orders, which sometimes required Mr. Mercado to return to his workstation so he could provide answers.

Furthermore, as stated, because CARDINAL frowned upon employees accruing meal period penalties, CARDINAL's management pressured Mr. Mercado and other aggrieved employees to clock out for meal periods and/or adjusted Mr. Mercado's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by CARDINAL. For example, Mr. Mercado was required to clock out for his meal period to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods. Moreover, if Mr. Mercado and other aggrieved employees were not going to be able to clock out for their meal periods in timely fashion due to their heavy workload, management instructed employees not to clock out at all and allow management to input the times themselves to appear as though compliant meal periods were provided.

Also, CARDINAL's company-wide timekeeping system prevented Mr. Mercado and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Mercado and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Moreover, CARDINAL did not provide Mr. Mercado and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Mercado worked shifts in excess of ten (10) or more hours per day but was not provided an uninterrupted second 30-minute meal period. Mr. Mercado and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Additionally, CARDINAL had a company-wide policy of requiring all employees to sign blanket meal period waivers at or near their time of hire. CARDINAL took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were

entitled. CARDINAL's company-wide use of blanket meal period waivers, signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Mercado and other aggrieved employees from taking all meal periods to which they were entitled. And, CARDINAL's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers, discouraged Mr. Mercado and other aggrieved employees from taking all meal periods.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). The fact that CARDINAL requires aggrieved employees to sign meal waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because CARDINAL's obligation to provide Mr. Mercado and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

CARDINAL knew or should have known that as a result of its non-compliant policies and practices, that Mr. Mercado and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. CARDINAL further knew or should have known that it did not pay Mr. Mercado and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, CARDINAL engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Mercado and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that CARDINAL did pay Mr. Mercado and other aggrieved employees premium pay for missed, late, and interrupted meal periods, CARDINAL did not pay Mr. Mercado and other aggrieved employees at the correct rate of pay for premiums because CARDINAL systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CARDINAL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Mercado and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CARDINAL regularly failed to authorize and permit Mr. Mercado and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CARDINAL's company-wide practices, including understaffing and the assignment of heavy workloads and strict production deadlines, prevented Mr. Mercado and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, CARDINAL also failed to adhere to a schedule of rest periods, which, coupled with CARDINAL's failure to provide adequate rest period coverage, further led to Mr. Mercado and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, CARDINAL maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Mercado and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Mercado and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as walking over to the nearby convenience store to purchase a cold drink because it was hot inside the factory. Thus, CARDINAL effectively maintained control over Mr. Mercado and other aggrieved employees during rest periods.

As a result, Mr. Mercado and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Mercado missed rest periods at least three (3) times per week because of the heavy workload and lack of coverage. In addition, at least three (3) times per week, his second rest periods would be interrupted due to management asking him questions regarding the work he completed that day or requesting that he get back to work in order to address a production issue or to complete an order. Further, Mr. Mercado did not receive a third rest period when he worked shifts in excess of 10 hours.

CARDINAL also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this

practice and/or policy, Mr. Mercado and other aggrieved employees have not received all premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that CARDINAL did pay Mr. Mercado and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CARDINAL did not pay Mr. Mercado and other aggrieved employees at the correct rate of pay for premiums because CARDINAL failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CARDINAL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Mercado and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CARDINAL has knowingly and intentionally provided Mr. Mercado and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CARDINAL issued uniform wage statements to Mr. Mercado and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, CARDINAL violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because CARDINAL did not record the time Mr. Mercado and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), CARDINAL did not list the correct amount of gross wages and net wages earned by Mr. Mercado and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CARDINAL failed to accurately list the total number of hours worked by Mr. Mercado and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because CARDINAL did not calculate Mr. Mercado's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, CARDINAL did not list the correct amount of gross wages in compliance with section

226(a)(1). For the same reason, CARDINAL also failed to list the correct amount of net wages in violation of section 226(a)(5). CARDINAL also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Third, and separate from these violations, CARDINAL issued uniform wage statements to Mr. Mercado and other aggrieved employees that fail to list the correct address of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, obtain unemployment benefits, etc. Mr. Mercado's wage statements incorrectly list the employer as "CARDINAL GLASS INDUSTRIES" but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity, "CARDINAL GLASS INDUSTRIES, INC.," is listed with the California Secretary of State. Upon information and belief, this is the true name of the employing entity.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CARDINAL willfully failed to maintain accurate payroll records for Mr. Mercado and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CARDINAL failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Mercado and other aggrieved employees, in violation of section 1198. As stated, CARDINAL engaged in a company-wide practice and/or policy of falsifying Mr. Mercado's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Mercado and

other aggrieved employees. Furthermore, in light of CARDINAL's failure to provide Mr. Mercado and other aggrieved employees with second 30-minute meal periods to which they were entitled, CARDINAL kept no records of meal start and end times for second meal periods.

Because CARDINAL failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Mercado and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Mercado and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CARDINAL failed to pay Mr. Mercado and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

CARDINAL willfully failed to pay Mr. Mercado and other aggrieved employees who are no longer employed by CARDINAL all their earned wages, including, but not limited to, overtime wages,

minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving CARDINAL's employ.

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, CARDINAL implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, CARDINAL had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, CARDINAL was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, CARDINAL did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. CARDINAL's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide that "[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industrywide standards for the nature of the process and the work performed. ... If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort." California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section 6720 required the California Division of Occupational Safety and Health ("OSHA") to propose an indoor heat illness standard by January 1, 2019; OSHA's

draft standard, as of April 22, 2019, applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

Upon information and belief, CARDINAL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15), because CARDINAL failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat to a degree providing reasonable comfort.

During the relevant time period, Mr. Mercado and other aggrieved employees were subjected to excessive heat equaling or exceeding 100 degrees Fahrenheit. CARDINAL failed to provide Mr. Mercado and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and IWC Wage Order 1-2001, subdivision 15. For example, Mr. Mercado and other aggrieved employees who were present on CARDINAL’s worksites, where employees operated furnaces and manufactured glass, were not provided air conditioning and would be required to work indoors at 100 degrees Fahrenheit or more. Mr. Mercado experienced constant headaches due to excessive heat during and after his shifts. Accordingly, CARDINAL failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, including Mr. Mercado and other aggrieved employees, in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15).

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, CARDINAL had a company-wide policy of requiring Mr. Mercado and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but CARDINAL failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Mercado and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as receiving and reviewing text messages from management with production formulas that needed to be input in the computer. Although CARDINAL required Mr. Mercado and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, CARDINAL failed to reimburse them for this cost.

Second, during the relevant time period, CARDINAL, on a company-wide basis, required Mr. Mercado and other aggrieved employees to wear uniform items, including a turtleneck sweater, bump

cap, glasses/goggles, and gloves for enhanced protection, but failed to provide Mr. Mercado and other aggrieved employees with uniform laundering services or reimburse them for cleaning expenses incurred. Additionally, CARDINAL did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, CARDINAL only provided Mr. Mercado and other aggrieved employees with one (1) turtleneck sweater at the beginning of his employment. Because CARDINAL failed to provide Mr. Mercado and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Mercado and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses in doing so. For example, due to the nature of their work, Mr. Mercado's and other aggrieved employees' uniform sweaters would attract and acquire very small glass particles over the course of their shifts. As a result, Mr. Mercado and other aggrieved employees were forced to wash their uniform sweaters separately from any other items to prevent glass particles from getting into their regular clothes during a wash, thus incurring additional utility and laundry expenses. Thus, CARDINAL failed to maintain the uniforms they required Mr. Mercado and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Third, as stated, CARDINAL had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or obtain alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, CARDINAL was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. CARDINAL gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of CARDINAL. Although CARDINAL required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, CARDINAL never reimbursed them for their travel expenses.

CARDINAL could have provided Mr. Mercado and other aggrieved employees with the actual tools required for use on the job, such as company mobile devices and vehicles, as well as an adequate number of uniform items or access to laundering services. Or, CARDINAL could have reimbursed employees for their mobile device usage, mileage, travel, and laundering expenses or provided a uniform maintenance allowance. Instead, CARDINAL passed these operating costs off onto Mr. Mercado and other aggrieved employees. At all relevant times, Mr. Mercado did not earn at least two (2) times the minimum wage.

Thus, CARDINAL had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to

their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

CARDINAL failed to provide Mr. Mercado and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CARDINAL's failure to provide Mr. Mercado and other aggrieved employees with written notice of basic information regarding their employment with CARDINAL is in violation of Labor Code section 2810.5.

Mr. Mercado and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CARDINAL, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Mercado's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Mercado seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Mercado, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CARDINAL for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Mercado seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Mercado's reasonable attempt to settle his dispute with CARDINAL prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform CARDINAL of Mr. Mercado's aforementioned grievances and

the proposed remedies as detailed below, while affording CARDINAL a reasonable opportunity to satisfy Mr. Mercado's demands.

Demand is hereby made that CARDINAL shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. CARDINAL shall pay Mr. Mercado and all other aggrieved employees employed by CARDINAL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. CARDINAL shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. CARDINAL shall conduct a survey or interview all current and former aggrieved employees in California who worked for CARDINAL in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, mobile device expenses, travel, mileage, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. CARDINAL shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. CARDINAL also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. CARDINAL shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for CARDINAL's benefit, including, but not limited to, costs of mandatory medical examinations, mobile device expenses, travel expenses, mileage, and uniform maintenance, as required by Labor Code sections 222.5 and 2802.
6. CARDINAL shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. CARDINAL shall provide Mr. Mercado and all aggrieved employees employed by CARDINAL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. CARDINAL shall maintain a temperature in work areas that provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and take all feasible means to reduce excessive heat to a degree providing reasonable comfort, as required by California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15).

9. CARDINAL shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
10. CARDINAL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. CARDINAL shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 1-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

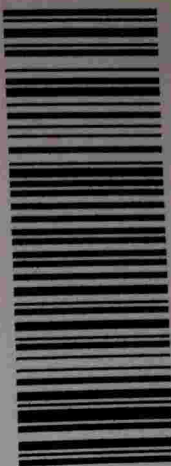


Ninel Kocharyan

Copy: CARDINAL GLASS INDUSTRIES, INC. (via U.S. Certified Mail); CARDINAL CT COMPANY (via U.S. Certified Mail); CARDINAL CG COMPANY (via U.S. Certified Mail)

Expanding Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

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7021 0950 0001 0025 2505

CARDINAL CT COMPANY
775 PRAIRIE CENTER DRIVE, STE #200
EDEN PRAIRIE MN 55344

1024

55344

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ALHAMBRA, CA
91802
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R2305K133289-14

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For delivery information, visit our website at www.usps.com.
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Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee appropriate)
☒ Return Receipt (hardcopy) \$3.05
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.18

Total Postage and Fees \$7.98

Sent To **CARDINAL CT COMPANY**
Street and Apt. No. or PO Box No. **775 PRAIRIE CENTER DR., STE 200**
City, State, ZIP+4® **EDEN PRAIRIE, MN 55344**

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CARDINAL CT COMPANY
775 PRAIRIE CENTER DR., STE 200
EDEN PRAIRIE, MN 55344

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

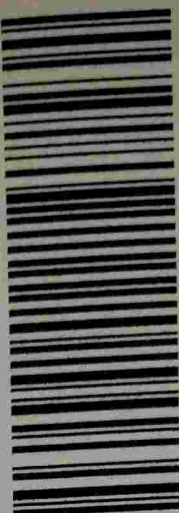
2. Article Number (Transfer from service label)
7021 0950 0001 0025 2505

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE
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7021 0950 0001 0025 2246

CARDINAL CG COMPANY
775 PRAIRIE CENTER DRIVE, SUITE 200
EDEN PRAIRIE MN 55344



1024



55344

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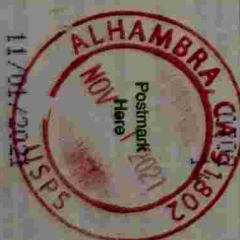
☐ Certified Mail Restricted Delivery \$0.00

☐ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.18

Total Postage and Fees \$7.98



7021 0950 0001 0025 2246
CARDINAL CG COMPANY
775 PRAIRIE CENTER DR., STE 200
EDEN PRAIRIE, MN 55344
PS Form 3800, April 2013 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

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- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CARDINAL CE COMPANY
775 PRAIRIE CENTRE DR. STE 200
EVEN PRAIRIE, MN 55344



9590 9402 6979 1225 0643 04

2. Article Description (Transfer from previous label)

702J 0950 000J 0025 224b

(over \$500)

Restricted Delivery

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
If YES, enter delivery address below: ☐ Yes ☐ No

3. Service Type

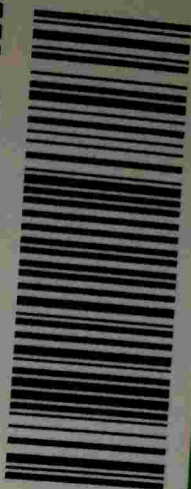
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|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

Los Angeles, California 90067
1875 Century Park East, Suite 1000

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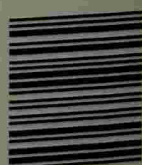


7021 0950 0001 0025 2253

CARDINAL GLASS INDUSTRIES, INC.
775 PRAIRIE CENTER DRIVE, SUITE 200
EDEN PRAIRIE MN 55344



1024



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U.S. POSTAGE PAID
FCM LETTER
ALHAMBRA, CA
91802
NOV 01, 21
AMOUNT

\$7.98
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Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee) \$3.05

☒ Return Receipt (hardcopy) \$0.00

☐ Return Receipt (electronic) \$0.00

☐ Certified Mail Restricted Delivery \$0.00

☐ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.18

Total Postage and Fees \$7.98



Sent To
CARDINAL GLASS INDUSTRIES, INC.

775 PRAIRIE CENTER DR, STE 200

EDEN PRAIRIE, MN 55344

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

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- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CARDINAL GLASS INDUSTRIES
775 PRAIRIE CENTER DR., STE 200
EVAN PRAIRIE, MN 55344



9590 9402 6979 1225 0642 98

2. Article Number (Transfer from service label)

7021 0950 0001 0025 2253

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

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1. Article Addressed to:

CARDINAL CG COMPANY
775 PRAIRIE CNTR DR., STE 200
EDEN PRAIRIE, MN 55344



9590 9402 6979 1225 0643 04

2. Article Number (Transfer from carrier label)

7021 0950 0001 0025 2246

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |

Restricted Delivery

(over \$500)

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CARDINAL CT COMPANY
775 PRAIRIE CNTR DR, STE 200
EDEN PRAIRIE, MN 55344



9590 9402 6979 1225 0643 11

2. Article Number (Transfer from service label)

7021 0950 0001 0025 2505

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt