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

DARREL NORTHRUP, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

GUYOU CONSTRUCTION, INC., a
California Corporation; MARCUS A.
GUYOU, an individual; and DOES 1 through
20, inclusive;

Defendants.

Case No.: **CVRI2105858**

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Timely Pay Wages Each Period;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Timely Pay Wages Each Period;
- (14) Failure to Timely Pay Final Wages;
- (15) Failure to Provide Accurate Itemized Wage Statements;

1 Plaintiff Darrel Northrup (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants GUYOU
5 CONSTRUCTION, Inc., MARCUS A. GUYOU, and DOES 1 through 20, inclusive,
6 (collectively, “Defendants”) on behalf of all current and former nonexempt employees employed
7 by Defendants in California (the “Class” or “Represented Employees”), for Labor Code
8 violations stemming from Defendants’ failure to pay all wages owed, including minimum,
9 regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks,
10 failure to timely pay wages each period, failure to timely pay wages upon separation of
11 employment, and failure to provide accurate itemized wage statements.

12 2. Plaintiff has been employed by Defendants since November 2020.

13 3. Plaintiff alleges on information and belief that the Represented Employees were
14 subjected to the same policies, working conditions, and corresponding wage and hour violations
15 to which Plaintiff was subjected during employment.

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked. For example, Plaintiff and the Represented Employees were not provided proper
19 minimum and overtime wages due to the Defendants’ failure to accurately record and compensate for
20 all hours worked. Among other violations, Defendants routinely altered clock in, clock out, and meal
21 period timekeeping records resulting in unpaid off the clock work. Moreover, Plaintiff and the
22 Aggrieved Employees were expected to travel to various worksites throughout Southern California
23 often resulting in unreasonable unpaid, off-the-clock travel time. Also, at all relevant times, the
24 Aggrieved Employees earned additional compensation in the form of nondiscretionary bonuses.
25 However, on the occasions when the Aggrieved Employees worked in excess of 8 and/or 12 hours
26 per day and/or 40 hours per week and received additional earned compensation during the pay
27 period, the Company failed to properly include these amounts in the calculations for the regular rate
28 of pay. Therefore, Defendants failed to pay proper overtime for the hours worked in excess of 8

1 and/or 12 per day and/or 40 per week.

2 5. Also, at all relevant times, Plaintiff and the Represented Employees were entitled
3 to and did receive additional earned compensation in the form of nondiscretionary bonuses.
4 However, during workweeks where the Represented Employees worked overtime hours and
5 earned additional nondiscretionary bonuses, Defendants failed to include that compensation in
6 the calculations for the regular rate of pay and instead paid overtime at only 1.5 times the base
7 rate of pay – violating the well-established rule that overtime must always be paid at time and
8 one-half the regular rate of pay.

9 6. Plaintiff and the Represented Employees were also denied 30-minute off-duty
10 meal periods, as mandated by California law. As a result of Defendants’ policies and practices,
11 the Represented Employees were subjected to meal period violations when they were: (1) unable
12 to take meal periods due to workload, (2) forced to take on-duty meal periods while under
13 Defendants’ control, (3) forced to take meal periods, if such a meal occurred, after the 5th hour
14 of work, (4) not provided a mandated first meal period for shifts in excess of 6 hours, and (5) not
15 provided mandated second or third meal periods for shifts over 10 or 15 hours, respectively.

16 7. Defendants also failed to provide Plaintiff and the Represented Employees with
17 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
18 mandated by California law. Defendants did not schedule rest breaks and the Represented
19 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
20 overwhelmed by their hectic workload. Additionally, Plaintiff and the Represented Employees
21 were not permitted to leave the premises for rest breaks, in violation of California law.
22 Furthermore, on occasions when Plaintiff and the Represented Employees worked longer shifts,
23 Defendants failed to authorize and/or permit mandated third or fourth rest breaks.

24 8. Plaintiff also alleges that he and the Represented Employees were not paid all
25 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
26 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
27 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
28 Employees at the time their employment ended with Defendants, including, but not limited to

1 minimum, regular, and overtime wages, wage premiums, among others.

2 9. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
3 statements that fully complied with the requirements of Labor Code § 226(a).

4 10. Plaintiff alleges that Defendants' violations of the wage and hour components of
5 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
6 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
7 its competitors.

8 11. At all material times, Defendants and DOES 1 through 20 were and/or are the
9 Represented Employees' employers or persons acting on behalf of the Represented Employees'
10 employer, within the meaning of California Labor Code § 558, who violated or caused to be
11 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
12 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
13 underpaid employee as set forth in Labor Code § 558 and under California law.

14 12. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
15 monetary relief against Defendants and each of them, on behalf of himself and the Represented
16 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
17 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
18 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
19 among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name
20 additional representatives throughout the State of California.

21 **II. JURISDICTION**

22 13. This Court has jurisdiction over the claims for relief of Plaintiff and the
23 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

24 **III. VENUE**

25 14. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
26 Procedure § 395(a). Defendants transact business in Riverside County and the unlawful acts
27 alleged herein have a direct effect on Plaintiff and the Represented Employees in Riverside
28 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in

1 Riverside County.

2 **IV. PARTIES**

3 **Plaintiff**

4 15. Plaintiff and Class Representative Darrel Northrup has been employed by
5 Defendants since approximately November 2020 and performed work for Defendants in
6 Riverside County.

7 **Defendants**

8 16. Plaintiff is informed and believes and thereon alleges that Defendant Guyou
9 Construction, Inc. is a California Corporation authorized to and doing business in Riverside
10 County, California. Plaintiff is also informed and believes that Defendant Guyou Construction,
11 Inc. is and/or was the legal employer of Plaintiff and the Represented Employees during the
12 applicable statutory periods.

13 17. Plaintiff is informed and believes and thereon alleges that Defendant Marcus A.
14 Guyou is an individual authorized to and doing business in Riverside County, California.
15 Plaintiff is also informed and believes that Defendant Marcus A. Guyou is and/or was the legal
16 employer of Plaintiff and the Represented Employees during the applicable statutory periods.

17 18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
18 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
19 inclusive, but on information and belief alleges that those Defendants are legally responsible for
20 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
21 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
22 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
23 Defendants when ascertained.

24 19. Plaintiff is informed and believes and thereon alleges that he and the Represented
25 Employees worked under the joint direction and control of Defendants and that Defendants, and
26 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
27 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
28 each Defendant are legally attributable to the other Defendants. On information and belief, a

1 unity of interest and ownership between each Defendant exists such that all Defendants acted as
2 a single employer of Plaintiff and other Represented Employees.

3 20. Furthermore, Plaintiff is informed and believes and thereon alleges that
4 Defendants, and each of them, are an integrated enterprise and should be treated as a single
5 employer because these entities share an interrelation of operations, with common human
6 resources and personnel policies and shared common offices and facilities. Additionally,
7 Defendants also have a shared website, common management, a centralized control of labor
8 operations, and common ownership or financial control.

9 21. Plaintiff is informed and believes and thereon alleges that, in conducting
10 themselves in the manner described herein, Defendants, and each of them, were acting in active
11 concert with one another such that the acts of each were and are fully attributable to the others in
12 all material respects. Plaintiff is further informed and believes that at all relevant times
13 Defendants and each of them are now, and at all material times herein mentioned were, the
14 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
15 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
16 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
17 their remaining co-Defendants.

18 22. Plaintiff is further informed and believes that at all relevant times, Defendants
19 have been inadequately capitalized to conduct business, have failed to follow appropriate
20 corporate formalities, and have simply been a shell and instrumentality through which
21 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
22 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
23 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
24 separate existence of these corporate entities would permit abuse of the corporate privilege,
25 thereby sanctioning fraud and promoting injustice.

26 **V. CLASS ACTION ALLEGATIONS**

27 23. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 24. Plaintiff brings this action on behalf of himself and all others similarly situated as
2 a class action, pursuant to Code of Civil Procedure § 382.

3 25. The relevant time period for this class action is defined as the period beginning
4 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

5 26. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
6 represent is defined as follows:

7 All current and former nonexempt employees employed by
8 Defendants in California during the Relevant Time Period.

9 27. Plaintiff also seeks to represent the following subclasses:

10 **Meal Break Subclass**

11 All Represented Employees who worked a shift in excess of
12 5 hours during the Relevant Time Period.

13 **Rest Break Subclass**

14 All Represented Employees who worked a shift of at least
15 3.5 hours during the Relevant Time Period.

16 **Waiting Time Penalties Subclass**

17 All Represented Employees who separated from their
18 employment with Defendants during the period three years
19 before the filing of this action and ending when final
20 judgment is entered.

21 **Wage Statement Penalties Subclass**

22 All Represented Employees during the period one year
23 before the filing of this action and ending when final
24 judgment is entered.

25 28. Plaintiff reserves the right to amend or modify the class description with greater
26 specificity or further division into subclasses or limitation to particular issues as appropriate.

27 29. Plaintiff, as Class Representative, is a member of the class and subclasses that he
28 seeks to represent.

1 30. This action has been brought and may properly be maintained as a class action
2 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
3 litigation and the proposed class is easily ascertainable from Defendants' records.

4 31. **Numerosity:** The potential members of the Class as defined are so numerous that
5 a joinder of all Represented Employees is impracticable. Although the exact number is currently
6 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

7 32. **Commonality:** There are questions of law and fact common to the class which
8 predominate over any questions affecting only individual members of the class, including
9 without limitation:

10 i. Whether Defendants violated the California Labor Code and applicable
11 IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all
12 hours worked;

13 ii. Whether Defendants violated the California Labor Code and applicable
14 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
15 Employees for hours above 8 and/or 12 per day and/or 40 per week;

16 iii. Whether Defendants violated the California Labor Code and applicable
17 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
18 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
19 with one additional hour of wages at the regular rate of pay for each instance when a compliant
20 meal period was not provided;

21 iv. Whether Defendants violated the California Labor Code and applicable
22 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
23 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
24 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
25 break was not provided;

26 v. Whether Defendants violated the California Labor Code by failing to
27 timely pay all wages to Plaintiff and the Class within the time required by Labor Code § 204;

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1 vi. Whether Defendants violated the California Labor Code by failing to
2 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
3 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

4 vii. Whether Defendants violated the California Labor Code by failing to
5 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
6 wage statements;

7 viii. Whether Defendants violated California Business & Professions Code §§
8 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
9 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
10 failure to timely pay final wages; and

11 ix. Whether Plaintiff and Represented Employees are entitled to equitable
12 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

13 33. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the
14 claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants'
15 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
16 wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest
17 breaks, failure to timely pay wages each period and upon separation of employment, and failure
18 to provide accurate itemized wage statements.

19 34. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
20 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
21 conflict with those of the Class. Class Representative's counsel are competent and experienced in
22 litigating large employment class actions and other complex litigation matters, including cases
23 like this case.

24 35. **Superiority of Class Action.** Class certification is appropriate because a class
25 action is superior to other available means for the fair and efficient adjudication of this
26 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
27 law and fact common to the Class predominate over any questions affecting only individual
28 members of the Class. Each Represented Employee has been damaged and is entitled to

1 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
2 treatment will allow those similarly situated persons to litigate their claims in the manner that is
3 most efficient and economical for the parties and the judicial system.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

7 *Plaintiff and the Represented Employees Against All Defendants*

8 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 37. Plaintiff and the Represented Employees were not exempt from the requirement
11 to be paid at least the applicable California minimum wage throughout the statutory period for
12 each hour worked.

13 38. Plaintiff and the Represented Employees were not provided proper minimum and
14 regular wages due to Defendants' failure to accurately record and compensate for all hours
15 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
16 required to perform off-the-clock work that Defendants either knew or should have known they
17 were performing.

18 39. Furthermore, Defendants failed to pay proper minimum wages to Plaintiff and the
19 Represented Employees due to its practice of routinely altered clock in, clock out, and meal
20 period timekeeping records resulting in unpaid off the clock work. Moreover, Plaintiff and the
21 Aggrieved Employees were expected to travel to various worksites throughout Southern
22 California often resulting in unreasonable unpaid, off-the-clock travel time.

23 40. Consequently, Defendants violated California Labor Code laws and minimum
24 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
25 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

26 41. Plaintiff is informed and believes and thereon alleges that Defendants
27 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
28 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

1 42. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
2 Represented Employees were entitled to be paid wages throughout the statutory period for each
3 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
4 them in accordance thereto.

5 43. At all material times, Defendants DOES 1 through 20 were and/or are the
6 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
7 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
8 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
9 Labor Code regulating hours and days of work respectively.

10 44. During employment of Plaintiff and the Represented Employees, Defendants
11 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

12 45. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
13 Employees have been damaged in amounts to be proven at trial.

14 46. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
15 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
16 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
17 at trial.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME WAGES**

20 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

21 *Plaintiff and the Represented Employees Against All Defendants*

22 47. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

24 48. Plaintiff and the Represented Employees were employees of Defendants who did
25 not receive proper protections and benefits of the laws governing payment of overtime wages.

26 49. Labor Code § 204 requires that the employer timely pay all overtime wages to its
27 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
28 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in

any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

50. At all relevant times, Plaintiff and the Represented Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the Represented Employees did not receive proper overtime compensation.

51. Furthermore, at all relevant times, Defendants paid Plaintiff and the Represented Employees on an hourly basis but also paid additional earned nondiscretionary bonuses. However, during workweeks where the Represented Employees worked overtime hours and earned additional nondiscretionary bonuses, Defendants failed to include the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay.

52. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per week without proper overtime compensation.

53. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

54. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Represented Employees were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

55. At all material times, Defendants DOES 1 through 20 were and/or are the employer of Plaintiff and the Represented Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California

1 Labor Code regulating hours and days of work respectively.

2 56. During the employment of Plaintiff and the Represented Employees, Defendants
3 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

4 57. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
5 Employees have been damaged in amounts to be proven at trial.

6 58. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
7 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
8 Defendants in an amount to be proven at trial.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

12 *Plaintiff and the Meal Break Subclass Against All Defendants*

13 59. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
14 alleged herein.

15 60. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
16 who did not receive proper protections and benefits of the laws governing mandatory meal
17 periods.

18 61. Labor Code § 226.7 requires employers, including Defendants, to provide
19 employees with meal periods as mandated by the Industrial Welfare Commission.

20 62. Labor Code § 512(a), in part, provides that employers, including Defendants, may
21 not employ an employee for a work period of more than five hours per day without providing an
22 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
23 except that if the total work period per day of the employee is no more than six hours, the meal
24 period may be waived by mutual consent of both the employer and the employee. Employers
25 may not employ an employee for a work period more than 10 hours per day without providing
26 the employee with a second meal period of not less than 30 minutes.

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1 63. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
2 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
3 pay for each meal period that is missed.

4 64. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
5 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
6 practices, Plaintiff and the Represented Employees were subjected to meal period violations
7 when they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal
8 periods while under Defendants' control, (3) forced to take meal periods, if such a meal
9 occurred, after the 5th hour of work, (4) not provided a mandated first meal period for shifts in
10 excess of 6 hours, and (5) not provided mandated second or third meal periods for shifts over 10
11 and 15 hours, respectively.

12 65. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
13 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
14 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
15 additional hour of compensation at the regular rate of pay in lieu thereof.

16 66. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
17 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
18 meal or rest periods, thereby receiving an economic benefit.

19 67. On information and belief, Plaintiff and the Meal Break Subclass did not
20 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
21 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
22 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
23 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
24 to take meal periods in accordance with California law.

25 68. By their failure to provide Plaintiff and the Meal Break Subclass with meal
26 periods as required by California law, and failing to pay one hour of additional wages in lieu of
27 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
28 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at

1 the employee's regular rate of compensation for each work day that a meal period was not
2 lawfully provided in an amount to be proven at time of trial.

3 69. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
4 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
5 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST BREAKS**

8 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

9 *Plaintiff and the Rest Break Subclass Against All Defendants*

10 70. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
11 alleged herein.

12 71. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
13 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

14 72. Labor Code § 226.7 requires employers, including Defendants, to provide rest
15 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

16 73. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
17 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
18 each work period. Employees shall receive a 10-minute rest period every four hours or major
19 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
20 hours worked, for which there shall be no deduction from wages.

21 74. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
22 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
23 at his regular rate of compensation for each day that the rest period is not provided.

24 75. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
25 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
26 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
27 Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due
28 to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Rest Break

Subclass were often not permitted to leave the premises for rest breaks, in violation of California law. Furthermore, on occasions when Plaintiff and the Rest Break Subclass worked lengthy shifts, Defendants failed to authorize and/or permit mandated third or fourth rest breaks.

76. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees one additional hour of compensation in lieu thereof.

77. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated rest periods, thereby receiving an economic benefit.

78. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks as required by California law, and failing to pay one hour of additional wages in lieu of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each workday that a paid rest break was not lawfully provided in an amount to be proven at time of trial.

79. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest Break Subclass for unpaid wage premiums, penalties, costs, and interest.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code §§ 204 and 210)

Plaintiff and the Represented Employees against All Defendants

80. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

81. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws regarding the timing of payment of wages each period.

1 82. Labor Code § 204(a) states that all wages earned by a person are due and payable
2 twice during each calendar month, and further states that wages earned during the first through
3 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
4 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
5 the following month.

6 83. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
7 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
8 the wages are paid not more than seven calendar days following the close of the payroll period.”

9 84. At all relevant times herein, Defendants did not provide Plaintiff and the
10 Represented Employees with all wages due and owing each period within the time required by
11 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Represented
12 Employees with all wages due and owing each pay period, including, but not limited to,
13 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
14 time specified by Labor Code § 204.

15 85. Labor Code § 210 establishes that, for each violation of Labor Code § 204,
16 Defendants are “subject to a penalty as follows: (1) for any initial violation, one hundred dollars
17 (\$100) for each failure to pay each employee. (2) for each subsequent violation, or any willful or
18 intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
19 percent of the amount unlawfully withheld.

20 86. Furthermore, Labor Code § 210 was recently amended to create a private right of
21 action for Plaintiff and the Represented Employees to seek these as a “statutory penalty”. See
22 Labor Code § 210(b).

23 87. As a result of Defendant’s violations of Labor Code § 204, Defendants, and each
24 of them, are liable to Plaintiff and the Represented Employees for the statutory penalties under
25 Labor Code § 210.

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

5 88. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 89. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing the timing
9 and payment of wages.

10 90. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 91. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 92. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 93. At all relevant times, Defendants employed a policy and practice whereby
19 Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
20 separation of employment within the time required by Labor Code §§ 201 and 202.

21 94. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
22 wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of
23 employment, including, but not limited to, minimum, regular, and overtime wages, as well as
24 meal and rest period premiums.

25 95. Plaintiff alleges that, at all times material to this action, Defendants had a planned
26 pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all
27 wages due and owing upon separation of employment as required by Labor Code §§ 201 and
28 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting

1 Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown
2 according to proof at trial and within the jurisdiction of this Court.

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

5 (Labor Code § 226)

6 *Plaintiff and the Wage Statement Penalties Subclass against All Defendants*

7 96. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
8 alleged herein.

9 97. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
10 Defendants who did not receive proper protections and benefits of the laws governing the
11 provision of accurate itemized wage statements.

12 98. Labor Code § 226(a) requires an employer to provide its employees with itemized
13 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
14 inclusive dates of the pay period, the employee's name and the last four digits of his or her
15 Social Security number (or employee identification number), the name and address of the legal
16 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee.

18 99. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
19 and the Wage Statement Penalties Subclass because Defendants failed to provide a wage
20 statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
21 requirements of Labor Code § 226(a).

22 100. For example, at all relevant times, Defendants paid Plaintiff and the Represented
23 Employees on a "salary" basis. And, as part of this policy, Defendants did not accurately record
24 the hours worked by the Represented Employees. Therefore, Defendants' wage statements failed
25 to accurately state total hours worked in the pay period. Also, the wage statements failed to state
26 all applicable rates of pay and corresponding hours worked at each rate.

27 101. Also, due to violations discussed herein, Defendants' wage statements failed to
28 accurately state gross wages earned, all deductions, and net wages earned.

1 102. Additionally, Defendants' wage statements frequently failed to state the accurate
2 overtime rate of pay.

3 103. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
4 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
5 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
6 requirements of Labor Code § 226(a).

7 104. Defendants' failure to provide the required writing deprived Plaintiff and the
8 Wage Statement Penalties Subclass of the ability to know, understand, and question the
9 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
10 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
11 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
12 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
13 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
14 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
15 perform its obligation under state law, all to their respective damages in amounts according to
16 proof at trial.

17 105. As a result of Defendants' knowing and intentional failure to comply with Labor
18 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
19 that each was prevented from knowing, understanding and disputing the wage payments paid to
20 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
21 injury in that the failure to show all wages earned on the itemized wage statements resulted in
22 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
23 withholdings owed by the employer, including, but not limited to, the failure to make all
24 necessary contributions for unemployment benefits, social security benefits, proper payment of
25 taxes and withholdings, and other mandated state and federal benefits.

26 106. Plaintiff has also been injured as a result of having to bring this action to attempt
27 to obtain correct wage information following Defendants' refusal to comply with many of the
28 mandates of California's Labor Code and related laws and regulations.

1 107. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
2 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
3 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
4 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
5 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
6 applicable penalty is all in an amount to be shown according to proof at trial.

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR AND UNLAWFUL COMPETITION**

9 (Business and Professions Code § 17200 *et seq.*)

10 *Plaintiff and the Represented Employees against All Defendants*

11 108. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 109. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
14 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
15 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
16 due to the unfair and unlawful business practices of Defendants as alleged herein.

17 110. Defendants, and each of them, are "persons" as defined under Business &
18 Professions Code § 17021.

19 111. As alleged herein, Defendants engaged in conduct that violated California's wage
20 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
21 mandated meal periods and rest breaks, and failure to timely pay wages each period and upon
22 separation of employment, all to decrease their costs and increase their profits.

23 112. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
24 Employees wages and monies and other financial obligations to which they were entitled.

25 113. As a result of Defendants' failure to comply with the Labor Code and IWC
26 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
27 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
28 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

1 114. Defendants' violations of the California Labor Code and IWC Wage Orders and
2 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
3 practices because it was done in a systematic manner over a period of time to the detriment of the
4 Plaintiff and all others similarly-situated.

5 115. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
6 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
7 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
8 of Civil Procedure § 1021.5.

9 116. A violation of California Business & Professions Code § 17200, et seq. may be
10 predicated on the violation of any state or federal law. All of the acts described herein as
11 violations of, among other things, the California Labor Code and IWC Wage Orders, are
12 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
13 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
14 practices in violation of California Business and Professions Code §§ 17200, et seq.

15 117. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
16 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
17 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
18 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
19 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
20 harm unless Defendants, and each of them, are restrained from continuing to engage in said
21 unfair, unlawful and/or fraudulent business practices.

22 118. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
23 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
24 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
25 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
26 Represented Employees are not obligated to establish individual knowledge of the unfair
27 practices of Defendants in order to recover restitution.

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1 119. Plaintiff, individually, and on behalf of the Represented Employees, is further
2 entitled to and do seek a declaration that the above described business practices are unfair,
3 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
4 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
5 the future.

6 120. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
7 Represented Employees are entitled to restitution of the wages withheld and retained by
8 Defendants during a period that commences four years prior to the filing of this complaint; a
9 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
10 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
11 Procedure § 1021.5 and other applicable laws; and an award of costs.

12 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
13 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

14 121. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
15 Defendants during the applicable statutory period and suffered one or more of the Labor Code
16 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
17 action filed on behalf of himself and all other similarly situated current and former aggrieved
18 employees in California against whom one or more of the alleged violations was committed
19 (hereinafter the “Aggrieved Employees”).

20 122. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
21 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
22 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
23 the facts and theories to support the alleged violations.

24 123. Therefore, once more than sixty-five (65) days have passed since the notice date,
25 Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this
26 Complaint will be deemed amended to include the PAGA allegations enumerated below. Once
27 this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
28 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by

PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

Plaintiff and the Aggrieved Employees against All Defendants

124. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

125. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

126. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages due to Defendants' failure to accurately record and compensate for all hours worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were required to perform off-the-clock work that Defendants either knew or should have known they were performing.

127. Furthermore, Defendants failed to pay proper minimum wages to Plaintiff and the Aggrieved Employees due to its practice of routinely altered clock in, clock out, and meal period timekeeping records resulting in unpaid off the clock work. Moreover, Plaintiff and the Aggrieved Employees were expected to travel to various worksites throughout Southern California often resulting in unreasonable unpaid, off-the-clock travel time. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

128. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

1 129. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **TENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

6 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 130. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 131. Plaintiff and the Aggrieved Employees were employees of Defendants who did
11 not receive proper protections and benefits of the laws governing payment of overtime wages.

12 132. Labor Code § 204 requires that the employer timely pay all overtime wages to its
13 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
14 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
15 any one workweek shall be compensated at the rate of no less than one and one-half times the
16 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
17 in one workday shall be compensated at twice the regular rate of pay for an employee.

18 133. At all relevant times, Plaintiff and the Aggrieved Employees were required by
19 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
20 Defendants' failure to accurately record and compensate for all hours worked Plaintiff and the
21 Aggrieved Employees did not receive proper overtime compensation.

22 134. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
23 Aggrieved Employees due to the failure to include all earned and nondiscretionary compensation
24 in the calculation for the regular rate of pay and overtime rate.

25 135. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on
26 an hourly basis but also paid additional earned nondiscretionary compensation and/or bonuses.
27 However, during workweeks where the Aggrieved Employees worked overtime hours and
28 earned additional nondiscretionary compensation and/or bonuses, Defendants failed to include

1 the bonuses in the calculations for the regular rate of pay and instead paid overtime at only 1.5
2 times the base rate of pay – violating the well-established rule that overtime must always be paid
3 at time and one-half the regular rate of pay.

4 136. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
5 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
6 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
7 week without proper overtime compensation.

8 137. Plaintiff is informed and believes and thereon alleges that Defendants
9 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
10 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

11 138. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
12 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
13 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

14 **TWELFTH CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

16 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

17 *Plaintiff and the Aggrieved Employees against All Defendants*

18 139. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
19 alleged herein.

20 140. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
21 who did not receive proper protections and benefits of the laws governing mandatory meal
22 periods.

23 141. Labor Code § 226.7 requires employers, including Defendants, to provide
24 employees with meal periods as mandated by the Industrial Welfare Commission.

25 142. Labor Code § 512(a), in part, provides that employers, including Defendants, may
26 not employ an employee for a work period of more than five hours per day without providing an
27 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
28 except that if the total work period per day of the employee is no more than six hours, the meal

1 period may be waived by mutual consent of both the employer and the employee. Employers
2 may not employ an employee for a work period more than 10 hours per day without providing
3 the employee with a second meal period of not less than 30 minutes.

4 143. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
5 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
6 pay for each meal period that is missed.

7 144. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
8 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
9 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
10 they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal
11 periods while under Defendants' control, (3) forced to take meal periods, if such a meal
12 occurred, after the 5th hour of work, (4) not provided a mandated first meal period for shifts in
13 excess of 6 hours, and (5) not provided mandated second meal periods for shifts over 10 hours.

14 145. Furthermore, on the occasions that Defendants paid Plaintiff and the Aggrieved
15 Employees a meal premium under Labor Code § 226.7 for a missed/denied meal period,
16 Defendants paid this premium at the base rate of pay instead of at the "regular rate" which
17 incorporates additional nondiscretionary compensation (such as shift differentials and bonuses).

18 146. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
19 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
20 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
21 one additional hour of compensation at the regular rate of pay in lieu thereof.

22 147. On information and belief, Plaintiff and the Aggrieved Employees did not
23 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
24 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
25 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
26 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
27 Employees to take meal periods in accordance with California law.

28 ///

1 148. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **TWELFTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

6 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 149. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
9 alleged herein.

10 150. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

12 151. Labor Code § 226.7 requires employers, including Defendants, to provide rest
13 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

14 152. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
15 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
16 each work period. Employees shall receive a 10-minute rest period every four hours or major
17 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
18 hours worked, for which there shall be no deduction from wages.

19 153. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
20 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
21 at his regular rate of compensation for each day that the rest period is not provided.

22 154. At all relevant times, Defendants also failed to provide Plaintiff and the
23 Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major
24 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the
25 Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks
26 due to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Aggrieved
27 Employees were often not permitted to leave the premises for rest breaks, in violation of
28 California law. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked

1 in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated
2 rest break.

3 155. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
4 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with
5 all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees
6 one additional hour of compensation in lieu thereof.

7 156. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
8 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
9 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

10 **THIRTEENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

12 (Labor Code § 204)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

14 157. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 158. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
17 of Defendants who did not receive proper protections and benefits of the laws regarding the
18 timing of payment of wages each period.

19 159. Labor Code § 204(a) states that all wages earned by a person are due and payable
20 twice during each calendar month, and further states that wages earned during the first through
21 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
22 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
23 the following month.

24 160. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
25 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
26 the wages are paid not more than seven calendar days following the close of the payroll period."

27 161. At all relevant times herein, Defendants did not provide Plaintiff and the
28 Aggrieved Employees with all wages due and owing each period within the time required by

1 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
2 Employees with all wages due and owing each pay period, including, but not limited to,
3 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
4 time specified by Labor Code § 204.

5 162. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
6 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
7 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

8 **FOURTEENTH CAUSE OF ACTION**

9 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

10 (Labor Code §§ 201 – 203 and 256)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

12 163. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 164. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
15 of Defendants who did not receive proper protections and benefits of the laws governing the
16 timing and payment of final wages.

17 165. Labor Code § 201 requires that the employer immediately pay any wages, without
18 abatement or reduction, to any employee who is discharged.

19 166. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
20 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
21 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

22 167. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
23 penalty from the due date thereof at the same rate until paid or until an action therefore is
24 commenced, but the wages shall not continue for more than thirty (30) days.

25 168. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
26 Employees with all wages due and owing upon separation of employment, including, but not
27 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
28 within the time specified by Labor Code §§ 201 – 203.

1 169. Plaintiff alleges that, at all times material to this action, Defendants had a planned
2 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
3 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

4 170. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **FIFTEENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

10 (Labor Code § 226)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

12 171. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 172. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
15 who did not receive proper protections and benefits of the laws governing the provision of
16 accurate itemized wage statements.

17 173. Labor Code § 226(a) requires an employer to provide its employees with itemized
18 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
19 inclusive dates of the pay period, the employee's name and the last four digits of his or her
20 Social Security number (or employee identification number), the name and address of the legal
21 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee.

23 174. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
24 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
25 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

26 175. For example, at all relevant times, Defendants paid Plaintiff and the Aggrieved
27 Employees on a "salary" basis. And, as part of this policy, Defendants did not accurately record
28 the hours worked by the Aggrieved Employees. Therefore, Defendants' wage statements failed

1 to accurately state total hours worked in the pay period. Also, the wage statements failed to state
2 all applicable rates of pay and corresponding hours worked at each rate.

3 176. Also, due to violations discussed herein, Defendants' wage statements failed to
4 accurately state gross wages earned, all deductions, and net wages earned.

5 177. Additionally, Defendants' wage statements frequently failed to state the accurate
6 overtime rate of pay.

7 178. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
8 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement
9 to Plaintiff and the Wage Statement Penalties Subclass that complied with the requirements of
10 Labor Code § 226(a).

11 179. As a result of the Defendants' violations of Labor Code §226(a)(9), Plaintiff seeks
12 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
13 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
14 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 ("Section
15 226.3 provides the civil penalty for failure to comply" with Labor Code § 226).

16 **VII. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
18 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
19 follows:

- 20 1. As to the Ninth through Fifteenth Causes of Action, the assessment of all
21 applicable and available remedies under the PAGA;
- 22 2. For reasonable attorneys' fees and costs as permitted under the PAGA;
- 23 3. That the First through Eighth Causes of Action be certified as a class action;
- 24 4. That Plaintiff be appointed as Class Representative;
- 25 5. That counsel for Plaintiff be appointed Class Counsel;
- 26 6. For all applicable statutory penalties recoverable under the First through Eighth
27 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
28 Orders of the Industrial Welfare Commission;

1 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
2 law, including those pursuant to the Labor Code;

3 8. For injunctive relief and/or restitution as provided by the Labor Code and
4 Business and Professions Code § 17200, *et seq.*;

5 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
6 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198,
7 1199, among other sections inadvertently omitted;

8 10. For an award of damages in the amount of unpaid compensation including, but
9 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
10 thereon;

11 11. For pre- and post-judgment interest; and

12 12. For such other relief as the Court deems just and proper.

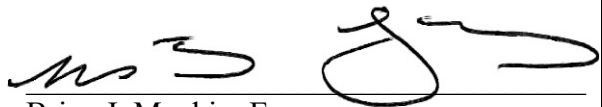
13 **DEMAND FOR JURY TRIAL**

14 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby
15 demands a jury trial as to the First through Seventeenth Causes of Action pled herein.

16
17 Dated: December 13, 2021

LAUBY, MANKIN & LAUBY LLP

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19 BY:



20 Brian J. Mankin, Esq.
21 Misty M. Lauby, Esq.
22 Attorneys for Plaintiff
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