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Case #21CV391071
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JOSHUA CARO, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act (“PAGA”),

Plaintiff,

vs.

HENRY AVOCADO CORPORATION, a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21CV391071

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day’s Rest in Seven)

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- (9) Violation of Labor Code § 1198 and California Code of Regulations Title 8, § 11140 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (11) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Joshua Caro, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants employ persons within the
5 County of Santa Clara, and have violated the requirements of the California Labor Code and
6 applicable Wage Order in this county which give rise to the penalties sought in this action.
7 Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the
8 California Labor Code and the applicable Wage Order in at least one location within the
9 County of Santa Clara, including Defendants' location in Milpitas (1141 Montague
10 Expressway, Milpitas, California 95035). Pursuant to California Civil Code of Procedure
11 section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in
12 the county in which the cause, or some part of the cause, arose. Because Defendants have
13 employees in Santa Clara County and Plaintiff could bring this action to recover penalties in
14 Santa Clara County, venue is proper. *Id.*

15 THE PARTIES

16 4. Plaintiff Joshua Caro is a resident of Valley Center, in San Diego County,
17 California. Plaintiff worked for Defendants as an hourly paid, non-exempt General Laborer at
18 their location in Escondido, California, from approximately August 2019 to December 2020.
19 During his employment, Plaintiff typically worked nine (9) hours or more per day and five (5)
20 or more days per week. Plaintiff's primary job duties included, without limitation, cutting
21 down trees, picking avocados, pulling out weeds, and maintaining the worksite premises.

22 5. HENRY AVOCADO CORPORATION was and is, upon information and
23 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
24 employees are engaged throughout this county and the State of California.

25 6. 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.

7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of HENRY AVOCADO CORPORATION at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, HENRY AVOCADO CORPORATION and/or DOES 1 through 10 (collectively, “Defendants” or “HAC”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

GENERAL ALLEGATIONS

11. Defendants are a grower, packer, marketer, ripener, and distributor of fresh conventional and organic avocados. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Escondido, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents,

1 indicate that Defendants dictated policies at the corporate level and implemented them
2 company-wide, regardless of their employees' assigned locations or positions. Upon
3 information and belief, Defendants set forth uniform policies and procedures in several
4 documents provided at an employee's time of hire.

5 13. Upon information and belief, Defendants maintain a centralized Payroll
6 department at their company headquarters in Escondido, California, which processes payroll
7 for all non-exempt, hourly paid employees working for Defendants at their various locations
8 and jobsites in California, including Plaintiff and class members. Based upon information and
9 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
10 employees in California, irrespective of their work locations. Upon information and belief,
11 Defendants process payroll for departing employees in the same manner throughout the State
12 of California, regardless of the manner in which each employee's employment ends.

13 14. Defendants continue to employ non-exempt or hourly paid employees in
14 California.

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

19 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
20 members were not paid for all hours worked because all hours worked were not recorded.

21 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive certain wages for
23 overtime compensation and that they were not receiving certain wages for overtime
24 compensation.

25 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive at least minimum
27 wages for compensation and that they were not receiving at least minimum wages for work
28 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff

1 and class members were not paid at least minimum wages for work done off-the-clock.

2 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
3 or should have known that Plaintiff and class members were entitled to meal periods in
4 accordance with the California Labor Code and applicable IWC Wage Order or payment of
5 one (1) additional hour of pay at their regular rates of pay when they were not provided with
6 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
7 were not provided with all meal periods or payment of one (1) additional hour of pay at their
8 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
9 period.

10 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to rest periods in
12 accordance with the California Labor Code and applicable IWC Wage Order or payment of
13 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
14 permitted to take a compliant rest period. In violation of the Labor Code, Plaintiff and class
15 members were not authorized and permitted to take compliant rest periods, nor did Defendants
16 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
17 regular rates of pay when they were not authorized and permitted to take a compliant rest
18 period.

19 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive complete and
21 accurate wage statements in accordance with California law. In violation of the California
22 Labor Code, Plaintiff and class members were not provided complete and accurate wage
23 statements.

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

28 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to timely payment of all
2 wages earned upon termination of employment. In violation of the California Labor Code,
3 Plaintiff and class members did not receive payment of all wages due, including, but not
4 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
5 time pay, within permissible time periods.

6 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to timely payment of wages
8 during their employment. In violation of the California Labor Code, Plaintiff and class
9 members did not receive payment of all wages, including, but not limited to, overtime wages,
10 minimum wages, meal and rest period premiums, and/or reporting time pay, within
11 permissible time periods.

12 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
14 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
15 and/or drug tests, but failed to do so.

16 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to one day's rest in seven.
18 In violation of the California Labor Code, Defendants required Plaintiff and class members to
19 work more than six consecutive days without a day of rest, where the total hours worked
20 exceeded 30 hours in any week or six hours in any one day thereof.

21 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive all reporting time
23 pay when Defendants required Plaintiff and class members were required to report to work but
24 were put to work for less than half of their regular scheduled shift. In violation of the
25 California Labor Code and applicable IWC Wage Order, Plaintiff and class members were not
26 paid all reporting time pay.

27 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to a sufficient number of

1 toilet facilities to use at the workplace. In violation of the California Labor Code and the
2 standards adopted by the Occupational Safety and Health Standards Board, Defendants failed
3 to provide Plaintiff and class members with a toilet facility.

4 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive full
6 reimbursement for all business-related expenses and costs they incurred during the course and
7 scope of their employment and that they did not receive full reimbursement of applicable
8 business-related expenses and costs incurred.

9 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that they had a duty to compensate
11 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
12 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
13 falsely represented to Plaintiff and class members that they were properly denied wages, all in
14 order to increase Defendants' profits.

15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 31. At all times herein set forth, PAGA provides that any provision of law under
17 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
18 assessed and collected by the LWDA for violations of the California Labor Code and
19 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
20 civil action brought on behalf of themselves and other current or former employees pursuant
21 to procedures outlined in California Labor Code section 2699.3.

22 32. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
23 person who was employed by the alleged violator and against whom one or more of the alleged
24 violations was committed."

25 33. Plaintiff and other current and former employees of Defendants are "aggrieved
26 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or
27 former employees and one or more of the alleged violations were committed against them.

28 34. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved

1 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
2 requirements have been met:

- 3 (a) The aggrieved employee or representative shall give written notice by
4 online filing with the LWDA and by certified mail to the employer of the
5 specific provisions of the California Labor Code alleged to have been
6 violated, including the facts and theories to support the alleged violation.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to
8 2699.3(a) and any employer response to that notice shall be accompanied
9 by a filing fee of seventy-five dollars (\$75).
- 10 (c) The LWDA shall notify the employer and the aggrieved employee or
11 representative by certified mail that it does not intend to investigate the
12 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
13 the postmark date of the aggrieved employee's notice. Upon receipt of
14 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
15 (65) calendar days of the postmark date of the aggrieved employee's
16 notice, the aggrieved employee may commence a civil action pursuant to
17 California Labor Code section 2699 to recover civil penalties.

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

- 21 (a) The aggrieved employee or representative shall give written notice by
22 online filing with the LWDA and by certified mail to the employer of the
23 specific provisions of the California Labor Code alleged to have been
24 violated (other than those listed in Section 2699.5), including the facts
25 and theories to support the alleged violation.
- 26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(c) and any employer response to that notice shall be accompanied
28 by a filing fee of seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice sent by the aggrieved
3 employee or representative. The employer shall give written notice
4 within that period of time by certified mail to the aggrieved employee or
5 representative and by online filing with the LWDA if the alleged
6 violation is cured, including a description of actions taken, and no civil
7 action pursuant to Section 2699 may commence. If the alleged violation
8 is not cured within the 33-day period, the aggrieved employee may
9 commence a civil action pursuant to Section 2699.

10 36. On December 2, 2021, Plaintiff provided written notice by online filing to the
11 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
12 Code alleged to have been violated, including facts and theories to support the alleged
13 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
14 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
15 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
16 PAGA Case Number LWDA-CM-855561-21. A true and correct copy of Plaintiff's written
17 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

18 37. As of the filing date of this complaint, over 65 days have passed since Plaintiff
19 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
20 to investigate Plaintiff's claims and Defendants have not cured the violations.

21 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
22 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
23 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a),
24 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2350, and 2802.

25 39. Labor Code section 558(a) provides "[a]ny employer or other person acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare Commission
28 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for

1 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
2 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
3 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
4 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
5 criminal penalty provided by law.”

6 40. Defendants, at all times relevant to this complaint, were employers or persons
7 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
8 rights by violating various sections of the California Labor Code as set forth above.

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

12 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
13 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
14 private attorney general, seeks assessment and collection of civil penalties for himself, all other
15 aggrieved employees, and the State of California against Defendants for violations of California
16 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
17 1182.12, 1194, 1197, 1197.1, 1198, 2350, and 2802.

18 **CLASS ACTION ALLEGATIONS**

19 43. Plaintiff brings this action on his own behalf, as well as on behalf of each and
20 all other persons similarly situated, and thus seeks class certification under California Code of
21 Civil Procedure section 382.

22 44. All claims alleged herein arise under California law for which Plaintiff seeks
23 relief authorized by California law.

24 45. Plaintiff’s proposed class consists of and is defined as follows:

25 All persons who worked for Defendants as non-exempt, hourly
26 paid employees in California, within four years prior to the filing
of the initial complaint¹ until the date of trial (“Class”).

27 ¹ Subject to applicable tolling rules and period(s) of tolling, which include, but are not
28 limited to, tolling under Emergency Rule 9 of the California Rules of Court.

1 46. Plaintiff's proposed subclass consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California, and who received at least one wage
4 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial ("Subclass").

5 47. Members of the Class and Subclass are referred to herein as "class members."

6 48. Plaintiff reserves the right to redefine the Class and Subclass and to add
7 additional subclasses as appropriate based on further investigation, discovery, and specific
8 theories of liability.

9 49. There are common questions of law and fact as to class members that
10 predominate over questions affecting only individual members, including, but not limited to:

- 11 (a) Whether Defendants required Plaintiff and class members to work over
12 the applicable maximum hours per day or maximum hours per week,
13 and failed to pay all legally required overtime compensation to Plaintiff
14 and class members;
- 15 (b) Whether Defendants failed to pay Plaintiff and class members at least
16 minimum wages for all hours worked;
- 17 (c) Whether Defendants failed to provide Plaintiff and class members with
18 meal periods;
- 19 (d) Whether Defendants failed to authorize and permit Plaintiff and class
20 members to take rest periods;
- 21 (e) Whether Defendants provided Plaintiff and class members with
22 complete and accurate wage statements as required by California Labor
23 Code section 226(a);
- 24 (f) Whether Defendants maintained accurate payroll records as required by
25 California Labor Code section 1174(d);
- 26 (g) Whether Defendants failed to pay earned overtime wages, minimum
27 wages, meal and rest period premiums, and/or reporting time pay due to
28 Plaintiff and class members upon their discharge;

- 1 (h) Whether Defendants failed timely to pay overtime wages, minimum
2 wages, meal and rest period premiums, and/or reporting time pay to
3 Plaintiff and class members during their employment;
- 4 (i) Whether Defendants failed to pay Plaintiff and class members for the
5 costs of mandatory physical examinations and/or drug testing;
- 6 (j) Whether Defendants failed to provide Plaintiff and class members one
7 day's rest in seven;
- 8 (k) Whether Defendants required Plaintiff and class members to report to
9 work, but failed to provide them with work or provided them with less
10 than half their scheduled day's work, without properly compensating
11 them as required by California Code of Regulations, Title 8, section
12 11140, subsection 5;
- 13 (l) Whether Defendants failed to provide a sufficient number of toilet
14 facilities to Plaintiff and class members;
- 15 (m) Whether Defendants failed to reimburse Plaintiff and class members for
16 necessary and required business-related expenditures and/or losses
17 incurred by them in the scope of their employment;
- 18 (n) Whether Defendants engaged in unlawful and unfair business practices
19 in violation of California Business & Professions Code sections 17200,
20 *et seq.*; and
- 21 (o) The appropriate amount of damages, restitution, or monetary penalties
22 resulting from Defendants' violations of California law.

23 50. There is a well-defined community of interest in the litigation and the class
24 members are readily ascertainable:

- 25 (a) Numerosity: The class members are so numerous that joinder of all
26 members would be unfeasible and impractical. The membership of the
27 entire class is unknown to Plaintiff at this time; however, the class is
28 estimated to be greater than one hundred (100) individuals and the

1 identity of such membership is readily ascertainable by inspection of
2 Defendants' employment records.

3 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
4 protect the interests of each class member with whom he has a well-
5 defined community of interest, and Plaintiff's claims (or defenses, if
6 any) are typical of all class members as demonstrated herein.

7 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
8 protect the interests of each class member with whom he has a well-
9 defined community of interest and typicality of claims, as demonstrated
10 herein. Plaintiff acknowledges that he has an obligation to make known
11 to the Court any relationship, conflicts or differences with any class
12 member. Plaintiff's attorneys, the proposed class counsel, are versed in
13 the rules governing class action discovery, certification, and settlement.
14 Plaintiff has incurred, and throughout the duration of this action, will
15 continue to incur costs and attorneys' fees that have been, are, and will
16 be necessarily expended for the prosecution of this action for the
17 substantial benefit of each class member.

18 (d) Superiority: The nature of this action makes the use of class action
19 adjudication superior to other methods. A class action will achieve
20 economies of time, effort, and expense as compared with separate
21 lawsuits, and will avoid inconsistent outcomes because the same issues
22 can be adjudicated in the same manner and at the same time for the
23 entire class.

24 (e) Public Policy Considerations: Employers in the State of California
25 violate employment and labor laws every day. Current employees are
26 often afraid to assert their rights out of fear of direct or indirect
27 retaliation. Former employees are fearful of bringing actions because
28 they believe their former employers might damage their future

endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

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

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

53. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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.”

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

55. Specifically, IWC Wage Order No. 14-2001 provides that, employers were required to pay employees working more than ten (10) hours in a day or more than sixty (60) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of ten (10) hours in a day or more than sixty (60) hours in a workweek. Starting January 1, 2019,

1 employers were required to pay employees working more than nine and one-half (9 ½) hours
2 in a day or more than fifty-five (55) hours in a workweek, at the rate of time and one-half (1
3 ½) for all hours worked in excess of nine and one-half (9 ½) hours in a day or more than fifty-
4 five (55) hours in a workweek. Effective January 1, 2020, employers were required to pay
5 employees working more than nine (9) hours in a day or more than fifty (50) hours in a
6 workweek, at the rate of time and one-half (1 ½) times the regular rate of pay for all hours
7 worked in excess of nine (9) hours in a day or more than fifty (50) hours in a workweek. IWC
8 Wage Order No. 14-2001 further provides that, starting January 1, 2021, employers are and
9 were required to pay employees working more than eight and one-half (8 ½) hours in a day or
10 more than forty-five (45) hours in a workweek, at the rate of time and one-half (1 ½) for all
11 hours worked in excess of eight and one-half (8 ½) hours in a day or more than forty-five (45)
12 hours in a workweek. An employee's regular rate of pay includes all remuneration for
13 employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and
14 incentive pay.

15 56. During the relevant time period, Defendants willfully failed to pay all overtime
16 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
17 class members were not paid overtime premiums for all of the hours they worked in excess of
18 the applicable maximum hours in a day and/or in excess of the applicable maximum hours in a
19 week, because all hours worked were not recorded.

20 57. First, during the relevant period, Defendants had a company-wide written
21 policy and practice of failing to compensate Plaintiff and class members for travel to or from
22 job sites. Defendants' written policy states: ". . . because I am voluntarily accepting this offer
23 of transportation to the job, **I will not be paid for the time spent traveling to/from work** and
24 I am not subject to the control of the employer, or on work time during this travel time."
25 (Emphasis added). Plaintiff and class members often reported to Defendants' main office in
26 Escondido, California, 30 minutes before their scheduled shifts to coordinate carpools in
27 company vehicles to the grove or orchard. Further, at the end of their scheduled shifts,
28 Plaintiff and class members were required to wait for other employees (for 10-20 minutes at a

1 time) to complete their tasks at the job site, board the company vehicles, and travel back to the
2 company headquarters from the job sites, time for which they were not compensated.
3 However, Plaintiff and class members were not considered to be “clocked-in” until arriving at
4 the grove and/or at the start of their scheduled shifts, and were considered “clocked-out” at the
5 end of their scheduled shifts (*see infra*), and thus were not paid for any time spent traveling to
6 or from the groves. Thus, Plaintiff and class members were not compensated for this travel
7 time, despite being under the direction and control of Defendants.

8 58. Second, in conjunction with their policy of failing to pay for travel time (*see*
9 *supra*), Defendants had a company-wide policy and/or practice of failing to accurately record
10 hours worked by their employees and thus restricted overtime accrual. Defendants did not
11 provide employees with any mechanism, such as a handwritten timesheet, time clock, or
12 electronic timekeeping system, to track and record their hours worked. Instead, Defendants
13 had their supervisors input all employee time on handwritten timesheets, and thus maintained
14 exclusive control and discretion over employee punch-in and punch-out times. Moreover, on
15 these timesheets, Defendants’ supervisors entered Plaintiff’s and class members’ shift start-
16 times and end-times and meal period start- and end-times with the hours they were scheduled,
17 instead of their actual hours worked.

18 59. Alternatively, during the relevant period, Defendants had a company-wide
19 policy and/or practice of improperly rounding or underreporting employee clock-in and clock-
20 out duration times to the nearest half-hour in their timekeeping system. Defendants’ rounding
21 policy resulted in the failure to compensate Plaintiff and class members fully for all hours
22 worked, causing Plaintiff and class members to not be paid overtime wages for all of the
23 overtime hours they actually worked. Upon information and belief, Defendants’ rounding
24 policy has, and continues to be, unfair and has, over time, resulted in the underpayment of
25 wages to Plaintiff and class members. To the extent Defendants’ rounding policy took away
26 time worked that was eligible for overtime, Plaintiff and class members were denied overtime
27 pay for all hours worked. Because Defendants failed to provide Plaintiff and class members
28 with any mechanism to record their actual hours worked themselves and, instead, granted

1 Defendants' supervisors exclusive control and discretion over employee time records, and
2 further failed to accurately record their actual hours worked, Plaintiff and class members were
3 not paid for all hours worked, including, but not limited to, time spent waiting for carpools,
4 time spent traveling to and from job sites, and time spent working before or after their
5 scheduled shifts.

6 60. For example, when Plaintiff and class members drove directly to the groves in
7 their personal vehicles, Defendants' supervisors required them to arrive 30 minutes before
8 their scheduled shift start-time and begin working immediately without clocking them in until
9 their scheduled shift start-time. Moreover, about twice a month, Plaintiff and class members
10 were required to attend meetings at Defendants' headquarters starting at 6:00 a.m., an hour
11 before their scheduled shift start-time. Also, about 10 times per month for 15 minutes at a
12 time, after arriving back at the headquarters following their shifts, Plaintiff and class members
13 were required to unload the company vehicles and store equipment in storage units while off-
14 the-clock.

15 61. As a result, Defendants did not compensate Plaintiff and class members for this
16 time worked before and/or after their scheduled shifts. Because Defendants failed to provide
17 Plaintiff and class members with any mechanism to record their actual hours worked
18 themselves and, instead, granted Defendants' supervisors exclusive control and discretion
19 over employee time records, Plaintiff and class members were not paid for all hours worked.

20 62. Third, during the relevant time period, Defendants had a company-wide "on-
21 call" policy, whereby they scheduled Plaintiff and class members to work "on-call" shifts.
22 During an "on-call" shift, Plaintiff and class members had to be available and report to work
23 upon receiving a call from Defendants notifying them that they were needed to report to work.
24 When scheduled to be "on-call," Plaintiff and class members were in essence on controlled
25 standby for Defendants because they could not use that time freely for their own purposes and
26 were forced to put their lives on hold. For example, when assigned to "on-call" duty, Plaintiff
27 refrained from making plans because he knew that he had to drop whatever he was doing at a
28 moment's notice if he received a call from Defendants to report to work. However,

1 Defendants failed to pay Plaintiff and class members for the time during which they were
2 waiting to receive a call from Defendants and unable to use their time for their own purposes.

3 63. Fourth, as stated, Defendants' company-wide timekeeping practices and/or
4 policies did not permit employees, including Plaintiff and class members, to accurately track
5 the start and stop times of their meal periods or allow them to report a short, missed, or
6 interrupted meal period. As stated, because Defendants' supervisors logged the start and stop
7 times of meal periods on timesheets which Plaintiff and class members did not have access to,
8 Defendants, upon information and belief, would record that compliant meal periods were
9 taken, even if that was not the case. Alternatively, Defendants implemented a company-wide
10 practice and/or policy of automatically deducting meal periods from Plaintiff's and class
11 members' time records. As a result, because Defendants' supervisors recorded 30-minute
12 meal periods were taken, when meal periods were short, missed, or interrupted, Plaintiff and
13 class members were not paid for all hours worked.

14 64. Fifth, during the relevant time period, Defendants had, and continue to have, a
15 uniform practice and/or policy of understaffing their locations while assigning heavy
16 workloads, which resulted in a lack of adequate meal period coverage, because there were too
17 few employees on duty to handle the heavy workload. For example, Plaintiff's and class
18 members' meal periods were interrupted and/or cut short at least once per week by the
19 foreman instructing employees to return to work and prepare the area for the supervisor's
20 inspection. As a result, Plaintiff and class members were not always afforded timely,
21 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
22 period. Consequently, Plaintiff and class members performed work during meal periods for
23 which they were not paid.

24 65. Defendants knew or should have known that as a result of these company-wide
25 practices and/or policies, Plaintiff and class members were performing their assigned duties
26 off-the-clock before and after their shifts and during meal periods, and were suffered or
27 permitted to perform work for which they were not paid. Because Plaintiff and class members
28 worked shifts of the applicable maximum hours in a day and/or the applicable maximum hours

1 in a week, some of this off-the-clock work qualified for overtime premium pay. Therefore,
2 Plaintiff and class members were not paid overtime wages for all of the overtime hours they
3 actually worked.

4 66. Defendants' failure to pay Plaintiff and class members the balance of overtime
5 compensation as required by California law, violates the provisions of California Labor Code
6 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
7 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
8 and attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 11 **Minimum Wages** 12 **(Against all Defendants)**

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

15 68. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
17 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
18 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 14-2001 as
19 "the time during which an employee is subject to the control of an employer, and includes all
20 the time the employee is suffered or permitted to work, whether or not required to do so."
21 Cal. Code. Regs. tit. 8, § 11140(2)(G) (defining "Hours Worked").

22 69. As set forth above, Defendants' company-wide policies and/or practices of
23 failing to compensate for travel time, not permitting employees to record all their hours
24 worked, and limiting overtime accrual, Defendants failed to record all hours worked outside of
25 scheduled shifts or during meal periods, including time spent traveling to and from grove
26 sites. Moreover, due to Defendants' policy of rounding or underreporting Plaintiff's and class
27 members' clock-in and clock-out times in their timekeeping system to the nearest half-hour,
28 Defendants failed to compensate Plaintiff and class members fully for all hours worked. Also,

1 as stated above, Defendants maintained a policy and/or practice requiring Plaintiff and class
2 members to perform work off-the-clock prior to clocking in at the start of their shifts and/or
3 after the end of their shifts. Additionally, as stated, Defendants systematically, and on a
4 company-wide basis, required Plaintiff and class members to work “on-call” shifts during
5 which they had to put their lives on hold and were restricted from using that time freely for
6 their own purposes. Even though Plaintiff and class members were subject to Defendants’
7 control during an “on-call” shift, Defendants did not pay Plaintiff and class members at least
8 minimum wages for all hours that they were suffered or permitted to work. Furthermore, due
9 to Defendants’ policies and/or practices of understaffing while assigning heavy workloads,
10 Plaintiff and class members were forced to forego meal periods, have their meal periods
11 interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

12 70. Furthermore, Defendants maintained and implemented a company-wide policy
13 of requiring all employees to travel to a medical facility on their own time and using their own
14 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
15 times, Defendants were in control of scheduling the time period for the testing and/or physical
16 examinations, selecting the provider or facility where the testing and/or physical examinations
17 were to take place, and determining the scope of the testing and/or physical examinations. For
18 example, Defendants gave Plaintiff strict instructions to obtain drug testing and a physical
19 examination, and Plaintiff underwent the testing and examination for the sole benefit of
20 Defendants. Plaintiff followed Defendants’ instructions, traveled for approximately 10
21 minutes total to and from Defendants’ designated medical facility, Concentra Urgent Care in
22 Escondido, California, and spent an additional two (2) hours waiting at the medical facility,
23 and undergoing the requisite drug testing and/or physical examination. However, Defendants
24 did not compensate Plaintiff and class members for the time they spent traveling to and from
25 the medical facilities and undergoing the mandatory drug testing and/or physical
26 examinations.

27 71. Defendants did not pay minimum wages for all hours worked by Plaintiff and
28 class members. To the extent that these off-the-clock hours did not qualify for overtime

1 premium payment, Defendants did not pay at least minimum wages for those hours worked
2 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
3 1198.

4 72. Defendants' failure to pay Plaintiff and class members minimum wages violates
5 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
6 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
7 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

8 **THIRD CAUSE OF ACTION**

9 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

10 **Violations**

11 **(Against all Defendants)**

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

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

21 75. At all relevant times herein set forth, California Labor Code sections 226.7,
22 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
23 meal period mandated by an applicable order of the IWC.

24 76. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
25 the applicable IWC Wage Order also require employers to provide a second meal period of
26 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
27 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
28 hours worked is no more than twelve (12) hours, the second meal period may be waived by

1 mutual consent of the employer and the employee only if the first meal period was not waived.

2 77. During the relevant time period, Defendants maintained a company-wide,
3 unlawful written meal period policy insofar as it fails to state the timing of when meal periods
4 must occur and implies that meal periods are only provided to employees working eight (8)
5 hour shifts. Under California law, first meal periods must start after no more than five hours
6 of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, Defendants' written meal period
7 policy states, in part: "You are entitled to a 30-minute meal period within a work period of
8 eight (8) hours." Defendants' written policy not only fails to state the correct timing of when
9 the first meal period must take place (i.e., within the first five (5) hours of work) under
10 California law, but also appears to indicate that a meal period is warranted only when working
11 eight (8) hour shifts, when, in fact, employees are entitled to a 30-minute meal period when
12 working a shift over five (5) hours.

13 78. Moreover, as described above, Defendants did not have a mechanism in place
14 for employees to track and record the start and stop times of their meal periods. Instead,
15 Defendants gave their supervisors exclusive control and discretion over employee punch-in
16 and punch-out times, including meal period start and stop times. Because Plaintiff and class
17 members did not have access to the timekeeping system, they were unable to record when
18 their meal periods were missed, late, interrupted, or cut short. Alternatively, Defendants
19 implemented a company-wide policy and practice of automatically deducting meal periods
20 from Plaintiff's and class members' time records regardless of whether they had actually
21 received a compliant meal period.

22 79. Finally, as also stated above, Defendants had, and continue to have, company-
23 wide policies and/or practices of understaffing their locations while assigning heavy
24 workloads, which resulted in a lack of meal period coverage and prevented Plaintiff and class
25 members from taking all timely, uninterrupted meal periods to which they were entitled.
26 Consequently, Plaintiff and class members were forced to work in excess of five (5) hours
27 before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal
28 periods altogether. For example, at least once per week, Defendants' foreman interrupted

1 Plaintiff's and class members' meal periods by instructing employees to return to work and
2 prepare the area for the supervisor's inspection. Plaintiff and class members did not sign valid
3 meal period waivers on days that they were entitled to meal periods and were not relieved of
4 all duties.

5 80. At all times herein mentioned, Defendants knew or should have known that, as
6 a result of their company-wide policies and/or practices, Plaintiff and class members were not
7 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
8 knew or should have known that they did not pay Plaintiff and class members meal period
9 premiums when meal periods were missed, late, short, and/or interrupted.

10 81. As described above, Defendants' company-wide policy and/or practice of
11 rounding or underreporting employee clock-in and clock-out times in their timekeeping
12 system prevented Plaintiff and class members from receiving meal period premiums when
13 they took late and/or shortened meal periods. Defendants' rounding policy rounded
14 employees' clock-in and clock-out times in their timekeeping system to the nearest half (0.5)
15 of an hour. Thus, to the extent that Defendants' timekeeping system reported that Plaintiff
16 and class members were provided with timely, full 30-minute meal periods when, in fact, the
17 meal periods were taken after the fifth hour of work or were less than 30 minutes, Plaintiff and
18 class members were entitled to a meal period penalty. Plaintiff and class members did not
19 receive meal period penalties for these improperly rounded meal periods.

20 82. Moreover, Defendants engaged in a company-wide practice and/or policy of
21 not paying all meal period premiums owed when compliant meal periods are not provided.
22 Because of Defendants' practices and/or policies, Plaintiff and class members have not
23 received premium pay for all missed, late, and interrupted meal periods. As a result,
24 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
25 of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal
26 period premiums due.

27 83. Defendants' conduct violates the applicable IWC Wage Order, and California
28 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore

entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)

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

85. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class members' employment by Defendants.

86. At all relevant times, 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.

87. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

88. During the relevant time period, Defendants regularly failed to authorize and

1 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
2 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
3 practices, including understaffing and assigning heavy workloads, prevented Plaintiff and
4 class members from being relieved of all duty to take their rest periods. Additionally,
5 Defendants failed to schedule timely rest periods, which, coupled with Defendants' failure to
6 provide adequate rest period coverage, further led to Plaintiff and class members not being
7 authorized and permitted to take compliant rest periods. For example, Defendants improperly
8 scheduled Plaintiff's and class members' rest periods for 12:00 p.m. and 2:00 p.m., despite
9 their scheduled shifts starting at 7:00 a.m., instead of within the first 3.5 hours of work and
10 within the first 6 hours of work. Thus, Plaintiff and class members took their first and second
11 rest periods late.

12 89. Furthermore, upon information and belief, during the relevant time period,
13 Defendants maintained and implemented a company-wide on-premises rest period policy,
14 which mandated that Plaintiff and/or class members remain on the work premises during their
15 rest periods. Because Plaintiff and/or class members were restricted from leaving the
16 premises during rest periods, they were denied the ability to use their rest periods freely for
17 their own purposes, such as running personal errands. Thus, Defendants effectively
18 maintained control over Plaintiff and/or class members during rest periods.

19 90. As a result of Defendants' practices and policies, Plaintiff and class members
20 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
21 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
22 as with meal periods, Plaintiff's rest periods were interrupted and/or cut short 1-2 times per
23 week because the foreman would ask him to return to work and to prepare for a supervisor's
24 visit by ensuring the work area was tidy.

25 91. Defendants have also engaged in a company-wide policy and/or practice of not
26 paying all rest period premiums owed when compliant rest periods are not authorized and
27 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
28 to pay them rest period premiums due, in violation of California Labor Code sections 226.7

1 and 516, and the applicable IWC Wage Order.

2 92. Defendants' conduct violates the applicable IWC Wage Order and California
3 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
4 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
5 compensation for each work day that a compliant rest period was not authorized and
6 permitted.

7 **FIFTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
9 **Statements and Failure to Maintain Accurate Payroll Records**
10 **(Against all Defendants)**

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

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

18 95. At all relevant times, Defendants have knowingly and intentionally provided
19 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
20 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
21 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name
22 of the employee and only the last four digits of his or her social security number or an
23 employee identification number other than a social security number; and all applicable hourly
24 rates in effect during the pay period, including overtime rates of pay, and the corresponding
25 number of hours worked at each hourly rate. Specifically, Defendants violated sections
26 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(7), and 226(a)(9).

27 96. Because Defendants did not record the time Plaintiff and Subclass members
28 spent working off the clock, improperly rounded their total hours worked, and deducted time

1 from their records for meal periods that were missed and/or interrupted (and therefore time for
2 which they should have been paid), Defendants did not list the correct amount of gross wages
3 and net wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1)
4 and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of
5 hours worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed
6 to list the applicable hourly rates of pay in effect during the pay period and corresponding
7 accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).
8 Moreover, Defendants fail to list the last four digits of Plaintiff's and Subclass members'
9 social security number or an employee identification number on their wage statements, in
10 violation of section 226(a)(7).

11 97. The wage statement deficiencies also include, without limitation, failing to list
12 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
13 a piece-rate basis; failing to list all deductions; failing to list the name and address of the legal
14 entity that is the employer; failing to list the inclusive dates of the period for which employees
15 were paid; and/or failing to state all hours worked as a result of not recording or stating hours
16 worked off-the-clock.

17 98. California Labor Code section 1174(d) provides that “[e]very person employing
18 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
19 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
20 plants or establishments at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
22 applicable piece rate paid to, employees employed at the respective plants or
23 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
24 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
25 members showing the daily hours they worked and the wages paid thereto as a result of failing
26 to record the off-the-clock hours that they worked and improperly rounding Plaintiff's and
27 Subclass members' total hours worked.

28 99. California Labor Code section 1198 provides that the maximum hours of work

1 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
2 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
3 employment of any employees for longer hours than those fixed by the order or under
4 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
5 Wage Order, employers are required to keep accurate time records showing when the
6 employee begins and ends each work period and meal period. During the relevant time
7 period, Defendants engaged in company-wide practices and/or policies of failing to record
8 actual hours worked (including falsifying time records by recording that compliant meal
9 periods were taken regardless of if or when meal periods were actually taken), and thereby
10 failed, on a company-wide basis, to keep accurate records of work period and meal period
11 start and stop times for Plaintiff and Subclass members, in violation of section 1198.

12 100. Plaintiff and Subclass members are entitled to recover from Defendants the
13 greater of their actual damages caused by Defendants’ failure to comply with California Labor
14 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
15 employee.

16 **SIXTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 18 **Termination** 19 **(Against all Defendants)**

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

22 102. This cause of action is dependent upon, and wholly derivative of, the overtime
23 wages, minimum wages, meal and rest period premiums, and/or reporting time pay, that were
24 not timely paid to Plaintiff and class members during their employment.

25 103. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 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.

104. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

105. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

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

107. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiff and class members during their employment.

108. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

1 109. At all times relevant herein, Labor Code section 204 provides that all wages
2 earned by any person in any employment between the sixteenth (16th) and the last day,
3 inclusive, of any calendar month, other than those wages due upon termination of an
4 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
5 month.

6 110. At all times relevant herein, Labor Code section 204 provides that all wages
7 earned for labor in excess of the normal work period shall be paid no later than the payday for
8 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
9 204 provides that the requirements of this section are deemed satisfied by the payment of
10 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
11 seven (7) calendar days following the close of the payroll period.

12 111. During the relevant time period, Defendants willfully failed to pay Plaintiff and
13 class members all wages due including, but not limited to, overtime wages, minimum wages,
14 meal and rest period premiums, and/or reporting time pay, within the time periods specified
15 by California Labor Code section 204.

16 112. Defendants' failure to pay Plaintiff and class members all wages due violates
17 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
18 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

19 **EIGHTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day's**

21 **Rest in Seven**

22 **(Against all Defendants)**

23 113. Plaintiff incorporates by reference and re-allege as if fully stated herein each
24 and every allegation set forth above.

25 114. At all relevant times herein, California Labor Code section 551 provides that
26 every person employed in any occupation of labor is entitled to one day's rest in seven.
27 Additionally, California Labor Code section 552 prohibits employers from requiring
28 employees to work more than six consecutive days without a day of rest.

115. At all relevant times herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

116. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

117. The applicable IWC Wage Order, California Code of Regulations, Title 8, section 11140(3)(A)(1) provides “such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

118. During the relevant time period, Defendants scheduled Plaintiff and class members to work eight (8) or more hours per day and seven (7) consecutive days in a workweek and also failed to pay the required premium wages. Because Plaintiff and class members worked over 30 hours per week and over six (6) hours per day in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and class members may have signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

119. Thus, during the relevant time period, and in violation of Labor Code sections 551 and 552, Defendants willfully caused Plaintiff and class members to work more than six

1 days in seven. Plaintiff and class members are therefore entitled to recover civil penalties
2 pursuant to California Labor Code section 558 in addition to any unpaid overtime and double
3 time premium wages.

4 **NINTH CAUSE OF ACTION**

5 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section** 6 **11140 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 7 **(Against all Defendants)**

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

10 121. California Labor Code section 1198 dictates that no employer may employ an
11 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.
12 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
13 fixed by the commission shall be the . . . standard conditions of labor for employees. The
14 employment of any employee . . . under conditions of labor prohibited by the order is
15 unlawful.”

16 122. The applicable IWC Wage Order, California Code of Regulations, Title 8,
17 section 11140(5)(A), provides that “[e]ach workday an employee is required to report for
18 work and does report, but is not put to work or is furnished less than half said employee’s
19 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
20 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
21 employee’s regular rate of pay, which shall not be less than the minimum wage.”

22 123. During the relevant time period, Defendants violated California Labor Code
23 section 1198 and California Code of Regulations, Title 8, section 11140(5)(A), because
24 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
25 work for their scheduled shift but were put to work for less than half of the regularly
26 scheduled day’s work.

27 124. As stated, Defendants had a company-wide “on-call” policy, whereby they
28 scheduled Plaintiff and class members to work “on-call,” or on standby. When scheduled for

1 a “on-call” or standby shift, Plaintiff and class members regularly presented themselves as
2 ready for work by waiting for supervisors to call them before their scheduled standby shift.
3 When this occurred, Defendants did not pay Plaintiff and class members for at least half of
4 their scheduled day’s work or the minimum reporting time pay when they were subject to
5 Defendants’ “on-call” policy and were ultimately not called.

6 125. Defendants also had a company-wide practice of sending Plaintiff and class
7 members home early from their shifts, including before they had worked at least half of their
8 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
9 For example, 10-15 times throughout his employment, Plaintiff would report to work for his
10 scheduled shift, but was sent home immediately because he was told there was no work.
11 Although Plaintiff and class members would report to work based on the schedule that
12 Defendants provided to them, Defendants would send them home before they had worked at
13 least half of their scheduled shifts without giving them reporting time pay.

14 126. Accordingly, Plaintiff and class members were not properly compensated with
15 reporting time pay in violation of California Labor Code section 1198 and California Code of
16 Regulations, Title 8, section 11140(5)(A).

17 **TENTH CAUSE OF ACTION**

18 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 19 **(Against all Defendants)**

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

22 128. At all times herein set forth, California Labor Code section 2802 provides that
23 an employer must reimburse employees for all necessary expenditures and losses incurred by
24 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
25 to prevent employers from passing off their cost of doing business and operating expenses on
26 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
27 (2014). The applicable wage order, IWC Wage Order No. 14-2001, provides that: “[w]hen
28 tools or equipment are required by the employer or are necessary to the performance of a job,

1 such tools and equipment shall be provided and maintained by the employer, except that an
2 employee whose wages are at least two (2) times the minimum wage provided herein may be
3 required to provide and maintain hand tools and equipment customarily required by the trade
4 or craft.”

5 129. First, during the relevant time period, Defendants had a company-wide policy
6 of requiring Plaintiff and class members to utilize their own personal mobile devices,
7 including, but not limited to, cellular phones, and/or mobile data to carry out their job duties,
8 but Defendants failed to fully reimburse them for the costs of their work-related mobile device
9 expenses. For example, Plaintiff and class members were required to contact supervisors from
10 job sites using their personal cellular phones, to inquire about daily tasks that needed to be
11 completed. This occurred 10-20 times per month and the conversations would each last five
12 (5) minutes on average. Although Defendants required Plaintiff and class members to utilize
13 their personal mobile devices to carry out their work-related responsibilities, Defendants
14 failed to fully reimburse them for this cost.

15 130. Second, during the relevant time period, Defendants had a company-wide
16 policy of requiring Plaintiff and class members to travel in their own personal vehicles to
17 obtain mandatory drug testing and/or physical examinations, but did not reimburse them for
18 their travel expenses, including mileage. Defendants maintained and implemented a
19 company-wide policy of requiring employees to travel to a medical facility on their own time
20 and using their own personal vehicles to undergo mandatory drug testing and/or physical
21 examinations. At all times, Defendants were in control of scheduling the date and time for the
22 testing and/or physical examinations, selecting the provider or facility where the testing and/or
23 physical examinations were to take place, and determining the scope of the testing and/or
24 physical examinations. Defendants gave Plaintiff and class members strict instructions to
25 obtain drug testing and physical examinations, and Plaintiff and class members underwent the
26 testing and physical examinations for the sole benefit of Defendants.

27 131. For example, as described above, Plaintiff followed Defendants’ instructions,
28 traveled three (3) miles roundtrip to and from Defendants’ designated medical facility,

1 Concentra Urgent Care in Escondido, California, and underwent Defendants’ drug testing and
2 physical examination, but was not reimbursed for his mileage to and from the medical facility.
3 Although Defendants required Plaintiff and class members to undergo drug testing and/or
4 physical examinations, Defendants failed to reimburse them for their travel expenses.

5 132. Defendants could have provided Plaintiff and class members with the actual
6 tools for use on the job, such as company mobile devices and vehicles. Or, Defendants could
7 have reimbursed employees for their mobile device expenses, mileage, and travel expenses.
8 Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all
9 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

10 133. Defendants’ company-wide policy and/or practice of passing on their operating
11 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
12 have intentionally and willfully failed to reimburse Plaintiff and other class members for
13 necessary business-related expenses and costs.

14 134. Plaintiff and class members are entitled to recover from Defendants their
15 business-related expenses incurred during the course and scope of their employment, plus
16 interest.

17 **ELEVENTH CAUSE OF ACTION**

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

19 **(Against all Defendants)**

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

22 136. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
24 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7,
25 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
26 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
27 violations of those Labor Code sections not found in section 2699.5, including sections 516,
28 1182.12, 2350, and 2810.5.

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

- 3 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
4 Wage Order for Defendants' failure to compensate Plaintiff and other
5 aggrieved employees with all required overtime pay, as alleged herein;
- 6 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
7 and the applicable IWC Wage Order for Defendants' failure to
8 compensate Plaintiff and other aggrieved employees with at least
9 minimum wages for all hours worked, as alleged herein;
- 10 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
11 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
12 and other aggrieved employees with meal periods, as alleged herein;
- 13 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to authorize and
15 permit Plaintiff and other aggrieved employees to take rest periods, as
16 alleged herein;
- 17 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
18 IWC Wage Order for failure to provide accurate and complete wage
19 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 20 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
21 IWC Wage Order for failure to maintain payroll records, as alleged
22 herein;
- 23 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
24 wages upon termination, as alleged herein;
- 25 (h) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment, as alleged herein;
- 27 (i) Violation of Labor Code section 222.5 for failing to compensate other
28 aggrieved employees for mandatory physical examinations and/or drug

testing, as set forth below;

- (j) Violation of Labor Code sections 551 and 552 for failure to provide Plaintiff and other aggrieved employees with one day's rest in seven, as alleged herein;
- (k) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff and other aggrieved employees were put to work for less than half of their regular scheduled shifts, as alleged herein;
- (l) Violation of Labor Code section 2350 for failure to provide sufficient toilet facilities in the workplace, as set forth below; and
- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

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

139. During the relevant time period, Defendants 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, Defendants 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, Defendants were 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.

140. However, Defendants 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

1 incurred getting to and from the medical facilities. Defendants' policy and/or practice of not
2 paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or
3 physical examinations is in violation of California Labor Code section 222.5.

4 141. Other aggrieved employees are therefore entitled to recover civil penalties
5 pursuant to Labor Code sections 2699(a), (f), and (g).

6 142. At all relevant times, California Labor Code section 2350 provides that all
7 employers must provide "a sufficient number of toilet facilities for the use of the employees."
8 During the relevant time period, Defendants failed to provide Plaintiff and other aggrieved
9 employees with sufficient toilet facilities. In fact, there was no restroom facility at any of the
10 Defendants' job sites, where Plaintiff and other aggrieved employees worked. Because
11 Defendants did not provide employees with toilet facilities at their job sites, Plaintiff and other
12 aggrieved employees were forced to relieve themselves outdoors.

13 143. Defendants' failure to provide Plaintiff and other aggrieved employees a toilet
14 facility to use at the workplace is in violation of Labor Code section 2350 and the standards
15 adopted by the Occupational Safety and Health Standards Board.

16 144. Plaintiff and other aggrieved employees are therefore entitled to recover civil
17 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 **TWELFTH CAUSE OF ACTION**

19 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

20 **Unlawful Business Practices**

21 **(Against all Defendants)**

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

24 146. Defendants are "persons" as defined by California Business & Professions
25 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
26 and/or associations.

27 147. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
28 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has

1 suffered injury in fact and has lost money as a result of Defendants' unlawful business
2 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
3 meaning of Code of Civil Procedure section 1021.5.

4 148. Defendants' activities, as alleged herein, are violations of California law, and
5 constitute unlawful business acts and practices in violation of California Business &
6 Professions Code sections 17200, *et seq.*

7 149. A violation of California Business & Professions Code sections 17200, *et seq.*
8 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
9 policies and practices have violated state law in at least the following respects:

- 10 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
11 class members, to work overtime without paying them proper
12 compensation in violation of California Labor Code sections 510 and
13 1198, and the applicable IWC Wage Order, as alleged herein;
- 14 (b) Failing to pay at least minimum wage to Plaintiff and class members in
15 violation of California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
17 herein;
- 18 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
19 members in violation of California Labor Code sections 226.7, 512(a),
20 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 21 (d) Failing to authorize and permit Plaintiff and class members to take
22 uninterrupted rest periods in violation of California Labor Code sections
23 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
24 herein;
- 25 (e) Failing to provide Plaintiff and class members with accurate wage
26 statements and failing to maintain accurate payroll records in violation
27 of California Labor Code sections 226(a), 1174(d), and 1198, and the
28 applicable IWC Wage Order, as alleged herein;

- 1 (f) Failing timely to pay all earned wages to Plaintiff and class members in
2 violation of California Labor Code section 204, as alleged herein;
- 3 (g) Failing to pay the costs of mandatory physical examinations and/or drug
4 testing in violation of California Labor Code section 222.5, as set forth
5 below;
- 6 (h) Failing to provide one day's rest in seven to Plaintiff and class members
7 in violation of California Labor Code sections 551 and 552, as alleged
8 herein;
- 9 (i) Failing to pay reporting time pay in violation of California Labor Code
10 section 1198 and the applicable IWC Wage Order, as alleged herein;
- 11 (j) Failing to provide Plaintiff and class members with a sufficient number
12 of toilet facilities for use in the workplace in violation of California
13 Labor Code section 2350 and the standards adopted by the Occupational
14 Safety and Health Standards Board, as set forth below; and
- 15 (k) Failing to reimburse Plaintiff and class members for all business
16 expenses necessarily incurred in violation of California Labor Code
17 section 2802, as alleged herein.

18 150. At all relevant times herein, California Labor Code section 222.5 requires
19 employers to pay for the costs an employee incurs for obtaining any medical or physical
20 examination taken pursuant to any law or regulation.

21 151. At all times relevant herein, Defendants implemented, on a company-wide
22 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory
23 drug testing and/or physical examinations, but required them to do so at their own expense.
24 As stated, Defendants had a company-wide policy requiring that all employees, including
25 Plaintiff and class members, travel to a specified medical facility using their own personal
26 vehicles or obtain alternate transportation to undergo drug testing and/or physical
27 examinations. At all times, Defendants were in control of scheduling the date and time for the
28 examination and/or testing, selecting the provider/facility where the examination and/or

1 testing was to take place, and determining the scope of the examination and/or testing.

2 152. During the relevant time period, as stated, Plaintiff was instructed by
3 Defendants to travel to Concentra Urgent Care, a medical facility in Escondido, California,
4 and obtain drug testing and/or a physical examination, and Plaintiff underwent the testing and
5 examination for the sole benefit of Defendants. Plaintiff followed Defendants' instructions,
6 traveled three (3) miles roundtrip (for approximately 10 minutes total) to and from
7 Defendants' designated medical facility in Escondido, California, and spent an additional two
8 (2) hours waiting at the medical facility, and undergoing the requisite drug testing and/or
9 physical examination.

10 153. However, Defendants did not compensate Plaintiff and class members for the
11 time they spent traveling to and from their testing and/or physical examinations, or for the
12 time they spent undergoing the testing and/or physical examinations, or reimburse them for
13 the travel expenses they incurred getting to and from the medical facility. Defendants' policy
14 and/or practice of not paying for all costs Plaintiff and class members incurred obtaining
15 mandatory drug tests and/or physical examinations violates California Labor Code section
16 222.5.

17 154. At all times herein set forth, California Labor Code section 2350 provides that
18 all employers must provide "a sufficient number of toilet facilities for the use of the
19 employees."

20 155. During the relevant time period, Defendants failed to provide Plaintiff and class
21 members with sufficient toilet facilities. In fact, there was no restroom facility at Defendants'
22 location in Escondido, California, where Plaintiff and other class members worked.

23 156. Because Defendants did not provide employees with toilet facilities at their
24 locations, Plaintiff and class members were forced to relieve themselves outdoors.
25 Defendants' failure to provide Plaintiff and class members a toilet facility to use at the
26 workplace is in violation of California Labor Code section 2350 and the standards adopted by
27 the Occupational Safety and Health Standards Board.

28 157. As a result of the violations of California law herein described, Defendants

1 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
2 have suffered pecuniary loss by Defendants’ unlawful business acts and practices alleged
3 herein.

4 158. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
5 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
6 Defendants during a period that commences four years prior to the filing of this complaint; a
7 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
8 class members; and an award of attorneys’ fees pursuant to California Code of Civil
9 Procedure section 1021.5 and other applicable laws; and an award of costs.

10 **THIRTEENTH CAUSE OF ACTION**

11 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

12 **Unfair Business Practices**

13 **(Against all Defendants)**

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

16 160. Defendants are “persons” as defined by California Business & Professions
17 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
18 and/or associations.

19 161. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
20 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
21 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
22 seeks to enforce important rights affecting the public interest within the meaning of Code of
23 Civil Procedure section 1021.5.

24 162. Defendants’ activities, namely Defendants’ company-wide practice and/or
25 policy of not paying Plaintiff and class members all meal and rest period premiums due to
26 them under Labor Code section 226.7, deprived Plaintiff and class members of the
27 compensation guarantee and enhanced enforcement implemented by section 226.7. The
28 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to

1 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
2 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
3 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
4 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
5 unfair business practice in violation of California Business & Professions Code sections
6 17200, *et seq.* (*Id.*)

7 163. A violation of California Business & Professions Code sections 17200, *et seq.*
8 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
9 and practices have violated the spirit of California’s meal and rest period laws and constitute
10 acts against the public policy behind these laws.

11 164. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
12 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
13 benefits implemented by section 226.7 withheld and retained by Defendants during a period
14 that commences four years prior to the filing of this complaint; a permanent injunction
15 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
16 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
17 Procedure section 1021.5 and other applicable laws; and an award of costs.

18 **REQUEST FOR JURY TRIAL**

19 Plaintiff requests a trial by jury.

20 **PRAYER FOR RELIEF**

21 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
22 against Defendants, jointly and severally, as follows:

23 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
24 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
25 reserves the right to amend his prayer for relief to seek a different amount.

26 **Class Certification**

27 2. That this case be certified as a class action;

28 3. That Plaintiff be appointed as the representative of the Class and Subclass;

1 4. That counsel for Plaintiff be appointed as class counsel.

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

3 5. That the Court declare, adjudge, and decree that Defendants violated California
4 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
5 pay all overtime wages due to Plaintiff and class members;

6 6. For general unpaid wages at overtime wage rates and such general and special
7 damages as may be appropriate;

8 7. For pre-judgment interest on any unpaid overtime compensation commencing
9 from the date such amounts were due, or as otherwise provided by law;

10 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
11 California Labor Code section 1194(a); and

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

14 **As to the Second Cause of Action**

15 10. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
17 Order by willfully failing to pay minimum wages to Plaintiff and class members;

18 11. For general unpaid wages and such general and special damages as may be
19 appropriate;

20 12. For pre-judgment interest on any unpaid compensation from the date such
21 amounts were due, or as otherwise provided by law;

22 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
23 California Labor Code section 1194(a);

24 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

25 15. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Third Cause of Action**

28 16. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by
2 willfully failing to provide all meal periods to Plaintiff and class members;

3 17. That the Court make an award to the Plaintiff and class members of one (1)
4 hour of pay at each employee's regular rate of pay for each workday that a meal period was
5 not provided;

6 18. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 19. For premiums pursuant to California Labor Code section 226.7(c);

9 20. For pre-judgment interest on any unpaid meal period premiums from the date
10 such amounts were due, or as otherwise provided by law;

11 21. For attorneys' fees pursuant to California Code of Civil Procedure section
12 1021.5, or as otherwise provided by law; and

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

15 **As to the Fourth Cause of Action**

16 23. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully
18 failing to authorize and permit Plaintiff and class members to take all rest periods;

19 24. That the Court make an award to the Plaintiff and class members of one (1) hour
20 of pay at each employee's regular rate of pay for each workday that a rest period was not
21 authorized and permitted;

22 25. For all actual, consequential, and incidental losses and damages, according to
23 proof;

24 26. For premiums pursuant to California Labor Code section 226.7(c);

25 27. For pre-judgment interest on any unpaid rest period premiums from the date
26 such amounts were due, or as otherwise provided by law;

27 28. For attorneys' fees pursuant to California Code of Civil Procedure section
28 1021.5, or as otherwise provided by law; and

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

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

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

1 41. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Seventh Cause of Action**

4 42. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
6 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
7 during their employment;

8 43. For all actual, consequential and incidental losses and damages, according to
9 proof;

10 44. For statutory penalties according to proof pursuant to California Labor Code
11 section 210;

12 45. For pre-judgment interest on any unpaid wages from the date such amounts
13 were due, or as otherwise provided by law;

14 46. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

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

18 **As to the Eighth Cause of Action**

19 48. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 551 and 552 by failing to provide a day's rest in seven; and that
21 Defendants committed said violations of the Labor Code against Plaintiff and class members;

22 49. For civil penalties for conduct occurring any time between one year prior to the
23 filing of this complaint and judgment, pursuant to California Labor Code section 558;

24 50. For general unpaid wages at overtime wage rates and such general and special
25 damages as may be appropriate;

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

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

1 **As to the Ninth Cause of Action**

2 53. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(5)(A) by
4 failing to provide Plaintiff and class members with reporting time pay;

5 54. For all actual, consequential and incidental losses and damages, according to
6 proof;

7 55. For pre-judgment interest on any unpaid wages from the date such amounts
8 were due, or as otherwise provided by law; and

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

11 **As to the Tenth Cause of Action**

12 57. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
14 related expenses and costs incurred by Plaintiff and class members;

15 58. For unpaid business-related expenses and such general and special damages as
16 may be appropriate;

17 59. For pre-judgment interest on any unpaid business-related expenses from the
18 date such amounts were due, or as otherwise provided by law;

19 60. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 61. For attorneys' fees and costs pursuant to California Labor Code section
22 2802(c), or as otherwise provided by law; and

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

25 **As to the Eleventh Cause of Action**

26 63. That the Court declare, adjudge and decree that Defendants violated the
27 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
28 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and

1 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
2 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
3 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
4 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
5 earned wages upon termination); 204 (by failing to timely pay all earned wages during
6 employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or
7 drug testing); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the
8 applicable IWC Wage Order (by failing to provide reporting time pay); 2350 (by failing to
9 provide sufficient toilet facilities in the workplace); and 2802 (by failing to reimburse
10 business expenses);

11 64. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
12 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
13 sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12,
14 1194, 1197, 1197.1, 1198, 2350, and 2802;

15 65. For attorneys' fees and costs pursuant to California Labor Code section
16 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
17 Labor Code sections 201, 202, 204, 221, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552,
18 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2350, and 2802;

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

20 67. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Twelfth Cause of Action**

23 68. That the Court declare, adjudge and decree that Defendants' conduct of failing
24 to provide Plaintiff and class members all overtime wages due to them, failing to provide
25 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
26 class members all meal periods, failing to authorize and permit Plaintiff and class members to
27 take all rest periods, failing to provide Plaintiff and class members accurate and complete
28 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,

1 failing to timely pay Plaintiff and class members all earned wages during employment, failing
2 to pay the costs of mandatory physical examinations and/or drug testing, failing to provide
3 one day's rest in seven, failing to pay Plaintiff and class members reporting time pay, failing
4 to provide Plaintiff and class members with use of a sufficient number of toilet facilities, and
5 failing to reimburse Plaintiff and class members for business-related expenses, constitutes an
6 unlawful business practice in violation of California Business and Professions Code sections
7 17200, *et seq.*;

8 69. For restitution of unpaid wages to Plaintiff and all class members and
9 prejudgment interest from the day such amounts were due and payable;

10 70. For the appointment of a receiver to receive, manage and distribute any and all
11 funds disgorged from Defendants and determined to have been wrongfully acquired by
12 Defendants as a result of violations of California Business & Professions Code sections
13 17200, *et seq.*;

14 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
15 California Code of Civil Procedure section 1021.5; and

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

18 **As to the Thirteenth Cause of Action**

19 73. That the Court declare, adjudge and decree that Defendants' conduct of denying
20 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
21 an unfair business practice in violation of California Business and Professions Code sections
22 17200, *et seq.*;

23 74. For restitution of the statutory benefits under section 226.7 unfairly withheld
24 from Plaintiff and class members and prejudgment interest from the day such amounts were
25 due and payable;

26 75. For the appointment of a receiver to receive, manage and distribute any and all
27 funds disgorged from Defendants and determined to have been wrongfully acquired by
28 Defendants as a result of violations of California Business & Professions Code sections

1 17200, *et seq.*;

2 76. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
3 California Code of Civil Procedure section 1021.5;

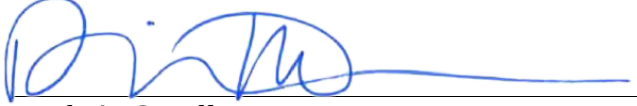
4 77. For pre-judgment and post-judgment interest as provided by law; and

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

7
8 Dated: February 7, 2022

Respectfully submitted,

9 Capstone Law APC

10
11 By: 

Mark A. Ozzello

Brandon K. Brouillette

John E. Stobart

Joseph Hakakian

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14 Attorneys for Plaintiff Joshua Caro
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EXHIBIT 1



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December 2, 2021

VIA ONLINE SUBMISSION

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

Subject: *Joshua Caro v. Henry Avocado Corporation*

Dear PAGA Administrator:

This office represents Joshua Caro in connection with his claims under the California Labor Code. Mr. Caro was an employee of HENRY AVOCADO CORPORATION ("HENRY AVOCADO").

The employer may be contacted directly at the address below:

HENRY AVOCADO CORPORATION
2208 HARMONY GROVE RD
ESCONDIDO CA 92029

Mr. Caro 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. Caro seeks relief on behalf of himself, the State of California, and other persons who are or were employed by HENRY AVOCADO 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.

HENRY AVOCADO employed Mr. Caro as an hourly paid, non-exempt General Laborer from approximately August 2019 to December 2020. Mr. Caro worked for HENRY AVOCADO at its grove/location in Escondido, California. During his employment, Mr. Caro typically worked nine (9) hours or more per day, Monday through Friday, and frequently worked on Saturday and/or Sunday. At the time Mr. Caro's employment with HENRY AVOCADO ended, he earned approximately \$14.00 per hour. His job duties included, without limitation, cutting down trees, picking avocados, pulling out weeds, and maintaining the worksite premises.

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

HENRY AVOCADO’s Company-Wide and Uniform Payroll and HR Practices

HENRY AVOCADO CORPORATION is a California corporation. It specializes in growing, packing, marketing, ripening, and distributing fresh conventional and organic avocados. Upon information and belief, HENRY AVOCADO maintains a single, centralized Human Resources (HR) department at its company headquarters in Escondido, California, for all non-exempt, hourly paid employees working for HENRY AVOCADO in California, including Mr. Caro and other aggrieved employees. At all relevant times, HENRY AVOCADO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Caro and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code section 510 requires employers to pay employees at the overtime 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 forty (40) hours in a workweek, or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

Specifically, IWC Wage Order No. 14-2001 provides that, employers were required to pay employees working more than ten (10) hours in a day or more than sixty (60) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of ten (10) hours in a day or more than sixty (60) hours in a workweek. Starting January 1, 2019, employers were required to pay employees working more than nine and one-half (9 ½) hours in a day or more than fifty-five (55)

¹ These facts, theories, and claims are based on Mr. Caro’s experience and counsel’s review of those records currently available relating to Mr. Caro’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. Caro 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.

hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of nine and one-half (9 ½) hours in a day or more than fifty-five (55) hours in a workweek. Effective January 1, 2020, employers were required to pay employees working more than nine (9) hours in a day or more than fifty (50) 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 nine (9) hours in a day or more than fifty (50) hours in a workweek. IWC Wage Order No. 14-2001 further provides that, starting January 1, 2021, employers are and were required to pay employees working more than eight and one-half (8 ½) hours in a day or more than forty-five (45) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight and one-half (8 ½) hours in a day or more than forty-five (45) hours in a workweek. 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.

HENRY AVOCADO willfully failed to pay all overtime wages owed to Mr. Caro and other aggrieved employees. During the relevant time period, Mr. Caro and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of the applicable maximum hours in a day and/or in excess of the applicable maximum hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, HENRY AVOCADO had a company-wide written policy and practice of failing to compensate Mr. Caro and other aggrieved employees for travel to or from job sites. HENRY AVOCADO's written policy states: ". . . because I am voluntarily accepting this offer of transportation to the job, **I will not be paid for the time spent traveling to/from work** and I am not subject to the control of the employer, or on work time during this travel time." (Emphasis added). Mr. Caro and other aggrieved employees often reported to HENRY AVOCADO's main office in Escondido, California, 30 minutes before their scheduled shifts to coordinate carpools in company vehicles to the grove or orchard. Further, at the end of their scheduled shifts, Mr. Caro and other aggrieved employees were required to wait for other employees (for 10-20 minutes at a time) to complete their tasks at the job site, board company vehicles, and travel back to the company headquarters from the job sites, time for which they were not compensated. However, Mr. Caro and other aggrieved employees were not considered to be "clocked-in" until arriving at the grove and/or at the start of their scheduled shifts, and were considered "clocked-out" at the end of their scheduled shifts (*see infra*), and thus were not paid for any time spent traveling to or from the groves. Thus, Mr. Caro and other aggrieved employees were not compensated for this travel time, despite being under the direction and control of HENRY AVOCADO.

Second, in conjunction with its policy of failing to pay for travel time (*see supra*), HENRY AVOCADO had a company-wide policy and/or practice of failing to accurately record hours worked by its employees and thus restricted overtime accrual. HENRY AVOCADO did not provide employees with any mechanism, such as a handwritten timesheet, time clock, or electronic timekeeping system, to track and record their hours worked. Instead, HENRY AVOCADO had its supervisors input all employee time on handwritten timesheets, and thus maintained exclusive control and discretion over employee punch-in and punch-out times. Moreover, on these timesheets, HENRY AVOCADO's supervisors entered Mr. Caro's and other aggrieved employees' shift start-times, shift end-times, and meal period start- and end-times with the hours they were scheduled, instead of their actual hours worked.

Alternatively, during the relevant period, HENRY AVOCADO had a company-wide policy and/or practice of improperly rounding or underreporting employee clock-in and clock-out duration times to the nearest half-hour in their timekeeping system. HENRY AVOCADO's rounding policy resulted

in the failure to compensate Mr. Caro and other aggrieved employees fully for all hours worked, causing Mr. Caro and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, HENRY AVOCADO's rounding policy has, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Mr. Caro and other aggrieved employees. To the extent HENRY AVOCADO's rounding policy took away time worked that was eligible for overtime, Mr. Caro and other aggrieved employees were denied overtime pay for all hours worked. Because HENRY AVOCADO failed to provide Mr. Caro and other aggrieved employees with any mechanism to record their actual hours worked themselves and, instead, granted HENRY AVOCADO's supervisors exclusive control and discretion over employee time records, and further failed to accurately record their actual hours worked, Mr. Caro and other aggrieved employees were not paid for all hours worked, including, but not limited to, time spent waiting for carpools, time spent traveling to and from job sites, and time spent working before or after their scheduled shifts.

For example, when Mr. Caro and other aggrieved employees drove directly to the groves in their personal vehicles, HENRY AVOCADO's supervisors required them to arrive 30 minutes before their scheduled shift start-time and begin working immediately without clocking them in until their scheduled shift start-time. Moreover, about twice a month, Mr. Caro and other aggrieved employees were required to attend meetings at the HENRY AVOCADO headquarters starting at 6:00 a.m., an hour before their scheduled shift start-time. Also, about 10 times per month for 15 minutes at a time, after arriving back at the headquarters following their shifts, Mr. Caro and other aggrieved employees were required to unload the company vehicles and store equipment in storage units while off-the-clock.

As a result, HENRY AVOCADO did not compensate Mr. Caro and other aggrieved employees for this time worked before and/or after their scheduled shifts. Because HENRY AVOCADO failed to provide Mr. Caro and other aggrieved employees with any mechanism to record their actual hours worked themselves and, instead, granted HENRY AVOCADO's supervisors exclusive control and discretion over employee time records, Mr. Caro and other aggrieved employees were not paid for all hours worked.

Third, during the relevant time period, HENRY AVOCADO had a company-wide "on-call" policy, whereby it scheduled Mr. Caro and other aggrieved employees to work "on-call" shifts. During an "on-call" shift, Mr. Caro and other aggrieved employees had to be available and report to work upon receiving a call from HENRY AVOCADO notifying them that they were needed to report to work. When scheduled to be "on-call," Mr. Caro and other aggrieved employees were in essence on controlled standby for HENRY AVOCADO because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, when assigned to "on-call" duty, Mr. Caro refrained from making plans because he knew that he had to drop whatever he was doing at a moment's notice if he received a call from HENRY AVOCADO to report to work. However, HENRY AVOCADO failed to pay Mr. Caro and other aggrieved employees for the time during which they were waiting to receive a call from HENRY AVOCADO and unable to use their time for their own purposes.

Fourth, as stated, HENRY AVOCADO's company-wide timekeeping practices and/or policies did not permit employees, including Mr. Caro and other aggrieved employees, to accurately track the start and stop times of their meal periods or allow them to report a short, missed, or interrupted meal period. As stated, because HENRY AVOCADO's supervisors logged the start and stop times of meal periods on timesheets which Mr. Caro and other aggrieved employees did not have access to,

HENRY AVOCADO, upon information and belief, would record that compliant meal periods were taken, even if that was not the case. Alternatively, HENRY AVOCADO implemented a company-wide practice and/or policy of automatically deducting meal periods from Mr. Caro's and other aggrieved employees' time records. As a result, because HENRY AVOCADO's supervisors recorded 30-minute meal periods were taken, even when meal periods were short, missed, or interrupted, Mr. Caro and other aggrieved employees were not paid for all hours worked. Fifth, during the relevant time period, on information and belief, HENRY AVOCADO had, and continues to have, a uniform practice and/or policy of understaffing its locations while assigning heavy workloads, which resulted in a lack of adequate meal period coverage. For example, Mr. Caro's and other aggrieved employees' meal periods were interrupted and/or cut short at least once per week by the foreman instructing employees to return to work and prepare the area for the supervisor's inspection. As a result, Mr. Caro and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. HENRY AVOCADO did not pay Mr. Caro and other aggrieved employees for the time they continued to perform tasks during meal periods.

HENRY AVOCADO knew or should have known that as a result of these company-wide practices and/or policies, Mr. Caro and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Caro and other aggrieved employees worked shifts of the applicable maximum hours in a day and/or the applicable maximum hours in a week, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Caro and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, HENRY AVOCADO did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, HENRY AVOCADO paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, HENRY AVOCADO 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 other aggrieved employees worked overtime and received these other forms of pay, HENRY AVOCADO failed to pay all overtime wages by paying a lower overtime rate than required.

HENRY AVOCADO's failure to pay Mr. Caro 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. Caro 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 Wage Order 14-2001 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."

As set forth above, HENRY AVOCADO's company-wide policies and/or practices of failing to compensate for travel time, not permitting employees to record all their hours worked, and limiting overtime accrual, HENRY AVOCADO failed to record all hours worked outside of scheduled shifts or during meal periods, including time spent traveling to and from grove sites. Moreover, due to HENRY AVOCADO's policy of rounding or underreporting Mr. Caro's and other aggrieved employees' clock-in and clock-out times in their timekeeping system to the nearest half-hour, HENRY AVOCADO failed to compensate Mr. Caro and other aggrieved employees fully for all hours worked. Also, as stated above, HENRY AVOCADO maintained a policy and/or practice requiring Mr. Caro and other aggrieved employees to perform work off-the-clock prior to clocking in at the start of their shifts and/or after the end of their shifts. Additionally, as stated, HENRY AVOCADO systematically, and on a company-wide basis, required Mr. Caro and other aggrieved employees to work "on-call" shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. Caro and other aggrieved employees were subject to HENRY AVOCADO's control during an "on-call" shift, HENRY AVOCADO did not pay Mr. Caro and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. Finally, due to HENRY AVOCADO's policies and/or practices of understaffing while assigning heavy workloads, Mr. Caro and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Moreover, HENRY AVOCADO 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, HENRY AVOCADO 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. HENRY AVOCADO 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 HENRY AVOCADO. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing HENRY AVOCADO's mandatory drug tests and/or physical examinations. However, HENRY AVOCADO 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, HENRY AVOCADO did not pay at least minimum wages for all hours worked by Mr. Caro and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, HENRY AVOCADO 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, and 1197.1.

Accordingly, HENRY AVOCADO regularly failed to pay at least minimum wages to Mr. Caro 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. Caro 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.

During the relevant time period, HENRY AVOCADO maintained a company-wide, unlawful written meal period policy insofar as it fails to state the timing of when meal periods must occur and implies that meal periods are only provided to employees working eight (8) hour shifts. Under California law, first meal periods must start after no more than five hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, HENRY AVOCADO's written meal period policy states, in part: "You are entitled to a 30-minute meal period within a work period of eight (8) hours." HENRY AVOCADO's written policy not only fails to state the correct timing of when the first meal period must take place (i.e., within the first five (5) hours of work) under California law, but also appears to indicate that a meal period is warranted only when working eight (8) hour shifts, when, in fact, employees are entitled to a 30-minute meal period when working a shift over five (5) hours. Furthermore, HENRY AVOCADO's non-compliant written meal period policy also fails to mention that employees are entitled to a second 30-minute meal period when working shifts in excess of ten (10) hours, and HENRY AVOCADO systematically, and on a company-wide basis, did not permit other aggrieved employees to take all second 30-minute meal periods when working shifts in excess of ten (10) hours. During the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Caro 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.

Moreover, as described above, HENRY AVOCADO did not have a mechanism in place for employees to track and record the start and stop times of their meal periods. Instead, HENRY AVOCADO gave its supervisors exclusive control and discretion over employee punch-in and punch-out times, including meal period start and stop times. Because Mr. Caro and other aggrieved employees did not have access to the timekeeping system, they were unable to record when their meal periods were missed, late, interrupted, or cut short. Alternatively, HENRY AVOCADO implemented a company-wide policy and practice of automatically deducting meal periods from Mr. Caro's and other aggrieved employees' time records regardless of whether they had actually received a compliant meal period.

Finally, as also stated above, on information and belief, HENRY AVOCADO had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Caro and other aggrieved employees from taking all timely and/or uninterrupted meal periods to which they were entitled. Consequently, Mr. Caro and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, at least once per week, HENRY AVOCADO's foreman interrupted Mr. Caro's and other aggrieved employees' meal periods by instructing employees to return to work and prepare the area for the supervisor's inspection.

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

As described above, HENRY AVOCADO's company-wide policy and/or practice of rounding or underreporting employee clock-in and clock-out times in its timekeeping system prevented Mr. Caro and other aggrieved employees from receiving meal period premiums when they took late and/or shortened meal periods. HENRY AVOCADO's rounding policy rounded employees' clock-in and clock-out times in their timekeeping system to the nearest half (0.5) of an hour. Thus, to the extent that HENRY AVOCADO's timekeeping system reported that Mr. Caro and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Caro and other aggrieved employees were entitled to a meal period penalty. Mr. Caro and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

Furthermore, HENRY AVOCADO 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. Caro and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that HENRY AVOCADO did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, HENRY AVOCADO did not pay other aggrieved employees at the correct rate of pay for premiums because HENRY AVOCADO 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, HENRY AVOCADO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Caro 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

provide 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, HENRY AVOCADO regularly failed to authorize and permit Mr. Caro and other aggrieved employees to take a timely ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HENRY AVOCADO’s company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Caro and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, HENRY AVOCADO failed to schedule timely rest periods, which, coupled with HENRY AVOCADO’s failure to provide adequate rest period coverage, further led to Mr. Caro and other aggrieved employees not being authorized and permitted to take compliant rest periods. For example, HENRY AVOCADO improperly scheduled Mr. Caro’s and other aggrieved employees’ rest periods for 12:00 p.m. and 2:00 p.m., despite their scheduled shifts starting at 7:00 a.m., instead of within the first 3.5 hours of work and within the first 6 hours of work. Thus, Mr. Caro and other aggrieved employees took their first and second rest periods late.

Furthermore, upon information and belief, during the relevant time period, HENRY AVOCADO maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Caro and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Caro and/or 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 running personal errands. Thus, HENRY AVOCADO effectively maintained control over Mr. Caro and/or other aggrieved employees during rest periods.

As a result of HENRY AVOCADO’s practices and policies, Mr. Caro and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, as with meal periods, Mr. Caro’s rest periods were interrupted and/or cut short 1-2 times per week because the foreman would ask him to return to work and to prepare for a supervisor’s visit by ensuring the work area was tidy.

HENRY AVOCADO 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. Alternatively, to the extent that HENRY AVOCADO did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HENRY AVOCADO did not pay other aggrieved employees at the correct rate of pay for premiums because HENRY AVOCADO 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, HENRY AVOCADO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Caro 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. HENRY AVOCADO has not provided Mr. Caro and other aggrieved employees with properly itemized wage statements. 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, HENRY AVOCADO has knowingly and intentionally provided Mr. Caro and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HENRY AVOCADO issued uniform wage statements to Mr. Caro and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, HENRY AVOCADO violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(7), and 226(a)(9).

First, because HENRY AVOCADO did not record the time Mr. Caro and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HENRY AVOCADO did not list the correct amount of gross wages and net wages earned by Mr. Caro and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HENRY AVOCADO failed to accurately list the total number of hours worked by Mr. Caro 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 HENRY AVOCADO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HENRY AVOCADO did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HENRY AVOCADO also failed to list the correct amount of net wages in violation of section 226(a)(5). HENRY AVOCADO 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, HENRY AVOCADO fails to list the last four digits of Mr. Caro's and other aggrieved employees' social security number or an employee identification number on their wage statements, in violation of section 226(a)(7). *See example paystub below.*

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HENRY AVOCADO CORPORATION					
2208 HARMONY GROVE					
ESCONDIDO, CA 92029-2054					

Taxable Marital Status: [REDACTED]		JOSHUA E CARO	
Exemptions/Allowances:		1121 MORNING VIEW DR APT 205	
Federal: [REDACTED]		ESCONDIDO CA 92026	
CA:			

Earnings Statement					
Period Beginning: 11/30/2020					
Period Ending: 12/13/2020					
Pay Date: 12/18/2020					

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	14.0000	37.00	518.00	14,059.50	Paid Sick Time		25.23
Sick Leave	14.0000	24.00	336.00	336.00			
Gross Pay			\$854.00	14,395.50			

Deductions	Statutory		
	Social Security Tax	-52.95	892.52
	Medicare Tax	-12.38	208.73
	CA SUI/SDI Tax	-8.54	143.96
Net Pay		\$780.13	
Net Check		\$780.13	

Important Notes
BASIS OF PAY: HOURLY

Your federal taxable wages this period are \$854.00

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 and 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), HENRY AVOCADO willfully failed to maintain accurate payroll records for Mr. Caro 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 and improperly rounding Mr. Caro's and other aggrieved employees' total hours 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, HENRY AVOCADO engaged in company-wide practices and/or

policies of failing to record actual hours worked (including falsifying 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 work period and meal period start and end times for Mr. Caro and other aggrieved employees in violation of section 1198. Furthermore, in light of HENRY AVOCADO's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, HENRY AVOCADO kept no records of meal start and end times for second meal periods.

Because HENRY AVOCADO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Caro 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. Caro 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. Caro 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, HENRY AVOCADO willfully failed to pay Mr. Caro and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Caro 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.

HENRY AVOCADO willfully failed to pay Mr. Caro and other aggrieved employees who are no longer employed by HENRY AVOCADO the earned and unpaid wages set forth above, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving HENRY AVOCADO's employ.

Mr. Caro 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, HENRY AVOCADO 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, HENRY AVOCADO 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, HENRY AVOCADO 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, HENRY AVOCADO 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. HENRY AVOCADO'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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, upon information and belief, HENRY AVOCADO scheduled Mr. Caro and other aggrieved employees to work eight (8) or more hours per day and seven (7)

consecutive days in a workweek. Because Mr. Caro and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Caro and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, HENRY AVOCADO caused Mr. Caro and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Caro 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 § 1198 and California Code of Regulations Title 8, Section 11140 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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, section 11140(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, HENRY AVOCADO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(5)(A), because HENRY AVOCADO failed to pay Mr. Caro and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day's work.

As described above, HENRY AVOCADO had a company-wide “on-call” policy, whereby it scheduled Mr. Caro and other aggrieved employees to work “on-call,” or on standby. When scheduled for a “on-call” or standby shift, Mr. Caro and other aggrieved employees regularly presented themselves as ready for work by waiting for supervisors to call them before their scheduled standby shift. When this occurred, HENRY AVOCADO did not pay Mr. Caro and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to HENRY AVOCADO's “on-call” policy and were ultimately not called.

HENRY AVOCADO also had a company-wide practice of sending Mr. Caro and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Caro and other aggrieved employees for half of their scheduled shift. For example, 10-15 times throughout his employment, Mr. Caro would report to work for his scheduled shift, but was sent home immediately because he was told there was no work. Although Mr. Caro and other aggrieved employees would report to work based on the schedule that HENRY AVOCADO provided to them, HENRY AVOCADO would send them home before they had worked

at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Caro and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11140(5)(A).

Mr. Caro 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 § 2350 – Failure to Provide Sufficient Toilet Facilities in the Workplace

California Labor Code section 2350 provides that all employers must provide “a sufficient number of toilet facilities for the use of the employees.” During the relevant time period, HENRY AVOCADO failed to provide Mr. Caro and other aggrieved employees with sufficient toilet facilities. In fact, there was no restroom facility at any of the HENRY AVOCADO job sites, where Mr. Caro and other aggrieved employees worked. Because HENRY AVOCADO did not provide employees with toilet facilities at its job sites, Mr. Caro and other aggrieved employees were forced to relieve themselves outdoors.

HENRY AVOCADO's failure to provide Mr. Caro and other aggrieved employees a toilet facility to use at the workplace is in violation of Labor Code section 2350 and the standards adopted by the Occupational Safety and Health Standards Board. Mr. Caro 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 14-2001, 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, HENRY AVOCADO, on a company-wide basis, required that Mr. Caro and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Caro and other aggrieved employees were required to contact supervisors from job sites using their personal cellular phones, to inquire about daily tasks that needed to be completed. This occurred 10-20 times per month and the conversations would each last five (5) minutes on average. Although HENRY AVOCADO required Mr. Caro and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, HENRY AVOCADO failed to reimburse them for this cost.

Second, as stated, HENRY AVOCADO 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, HENRY AVOCADO 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. HENRY AVOCADO 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 HENRY AVOCADO. Although HENRY AVOCADO required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, HENRY AVOCADO never reimbursed them for their travel expenses.

HENRY AVOCADO could have provided Mr. Caro and other aggrieved employees with the actual tools for use on the job, such as company mobile devices and vehicles. Or, HENRY AVOCADO could have reimbursed employees for their mobile device expenses, mileage, and travel expenses. Instead, HENRY AVOCADO passed these operating costs off onto Mr. Caro and other aggrieved employees. At all relevant times, Mr. Caro did not earn at least two (2) times the minimum wage.

Thus, HENRY AVOCADO 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. Caro 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).

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.” HENRY AVOCADO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Caro’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Caro 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. Caro, 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 HENRY AVOCADO for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2350, and 2802.

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

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,

A handwritten signature in black ink, appearing to read "Ninel", is shown on a light gray rectangular background.

Ninel Kocharyan

Copy: HENRY AVOCADO CORPORATION (via U.S. Certified Mail)

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