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Assigned for all Purposes
Judge Randall J. Sherman
CX-105

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

FRANCO PEREZ, 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.

THE CONTAINER SUPPLY CO., INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 30-2022-01243344-CU-OE-CXC

**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, and 1197.1 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7 & 512(a) (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code § 226.7 (Failure to Provide Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d) and 1198 (Non-Compliant Wage Statements and Failure to Maintain Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698,

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- et seq;*
(9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
(10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices).

Jury Trial Demanded

1 Plaintiff FRANCO PEREZ, individually, and on behalf of all other members of the
2 public 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 and state enforcement action is brought pursuant to California Code
6 of Civil Procedure section 382 and California Labor Code sections 2698 *et seq.* (“PAGA”) to
7 recover damages, statutory penalties, civil penalties and any other available relief on behalf of
8 Plaintiff, the State of California, and other current and former employees who worked for
9 Defendants in California as non-exempt, hourly-paid employees who received at least one
10 physical wage statement and against whom one or more violations of any provision in
11 Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of
12 work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed,
13 as set forth in this complaint. The monetary damages, penalties, and restitution sought by
14 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
15 according to proof at trial.

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

19 3. This Court has jurisdiction over all Defendants because, on information and belief,
20 Defendants are either citizens of California, have sufficient minimum contacts in California,
21 or otherwise intentionally avail themselves of the California market so as to render the
22 exercise of jurisdiction over them by the California courts consistent with traditional notions
23 of fair play and substantial justice.

24 4. Venue is proper in this Court because Defendants employ persons in this county and
25 employed Plaintiff in this county, and thus a substantial portion of the transactions and
26 occurrences related to this action occurred in this county.

27 5. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys
28 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys

1 general their current or former employers for various civil penalties for violations of various
2 provisions in the California Labor Code.

3 THE PARTIES

4 6. Plaintiff FRANCO PEREZ, at all times relevant to the claims asserted herein, was a
5 resident of Long Beach, in Los Angeles County, California. Defendants employed Plaintiff as
6 an hourly, non-exempt employee from on or about July 30th, 2020 to on or about April 7th,
7 2021. Plaintiff initially started working in the “Litho” department but later transitioned to the
8 “Metals” department at Defendant’s facility located in the city of Garden Grove, California.
9 During his employment, Plaintiff typically worked between eight and a half (8.5) and twelve
10 hours (12) hours per day, five (5) days per week, and approximately forty-five (45) or more
11 hours per week. His job duties included, without limitation, preparing and manufacturing
12 packaging materials for Defendant’s customers and clients.

13 7. Defendant CONTAINER SUPPLY CO., INC. (“CSC”) was and is, upon information
14 and belief, a California corporation doing business in California, with its principal place of
15 business in Garden Grove, California, and at all times hereinafter mentioned, an employer
16 whose employees are engaged throughout this county, the State of California, or the various
17 states of the United States of America.

18 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
19 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
20 complaint and serve such fictitiously named Defendants once their names and capacities
21 become known.

22 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the
23 partners, agents, owners, shareholders, managers, or employees of CSC at all relevant times.

24 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
25 omissions alleged herein was performed by, or is attributable to, CSC; and/or DOES 1 through
26 10 (collectively “DEFENDANTS” or “Defendants”), each acting as the agent, employee, alter
27 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and
28 was acting within the course and scope of such agency, employment, joint venture, or

1 concerted activity with legal authority to act on the others' behalf. The acts of any and all
2 Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

10 13. Under California law, Defendants are jointly and severally liable as employers for the
11 violations alleged herein because they have each exercised sufficient control over the wages,
12 hours, working conditions, and employment status of Plaintiff and class members. Each
13 Defendant had the power to hire and fire Plaintiff and class members, supervised and
14 controlled their work schedule and/or conditions of employment, determined their rate of pay,
15 and maintained their employment records. Defendants suffered or permitted Plaintiff and
16 class members to work and/or "engaged" Plaintiff and class members so as to create a
17 common-law employment relationship. As joint employers of Plaintiff and class members,
18 Defendants are jointly and severally liable for the civil penalties and all other relief available
19 to Plaintiff and class members under the law.

20 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
21 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
22 class members because Defendants have:

23 (a) jointly exercised meaningful control over the work performed by
24 Plaintiff and class members;

25 (b) jointly exercised meaningful control over Plaintiff and class members'
26 wages, hours, and working conditions, including the quantity, quality
27 standards, speed, scheduling, and operative details of the tasks
28 performed by Plaintiff and class members;

- 1 (c) jointly required that Plaintiff and class members perform work which is
2 an integral part of Defendants' businesses; and
- 3 (d) jointly exercised control over Plaintiff and class members as a matter of
4 economic reality in that Plaintiff and class members were dependent on
5 Defendants, who shared the power to set the wages of Plaintiff and class
6 members and determined their working conditions, and who jointly
7 reaped the benefits from the underpayment of their wages and
8 noncompliance with other statutory provisions governing their
9 employment.

10 15. Plaintiff is informed and believes, and further alleges, that at all relevant times there
11 has existed a unity of interest and ownership between Defendants such that any individuality
12 and separateness between the entities has ceased.

13 16. CSC and DOES 1 through 10 are therefore alter egos of each other.

14 17. Adherence to the fiction of the separate existence of Defendants would permit an abuse
15 of the corporate privilege, and would promote injustice by protecting Defendants from
16 liability for the wrongful acts committed by them under the name CSC.

17 **CLASS ACTION ALLEGATIONS**

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

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

23 20. Plaintiff's proposed class consists of and is defined as follows:

24 All persons who are or were employed by Defendants as
25 nonexempt, hourly-paid employees in California within four years
prior to the filing of this complaint until the date of trial ("Class").

26 21. Plaintiff's proposed subclass consists of and is defined as follows:

27 All persons who are or were employed by Defendants as
28 nonexempt, hourly-paid employees in California within one year
prior to the filing of this complaint until the date of trial who

received a wage statement from Defendants (“Subclass”).

22. Members of the Class and Subclass will hereinafter be referred to as “class members.”

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

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

- (a) Whether Defendants required Plaintiff and class members to work off-the-clock without payment;
- (b) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (c) Whether Defendants failed to pay at least minimum wages for all hours worked by Plaintiff and class members;
- (d) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (e) Whether Defendants failed to provide Plaintiff and class members with rest periods;
- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum

wages, and meal and rest period premiums to Plaintiff and class members during their employment;

- (j) Whether Defendants reimbursed Plaintiff and class members for business-related expenses they incurred as a result of their employment;
- (k) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will

1 continue to incur costs and attorneys' fees that have been, are, and will
2 be necessarily expended for the prosecution of this action for the
3 substantial benefit of each class member.

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

10 (e) Public Policy Considerations: Employers in the State of California
11 violate employment and labor laws every day. Current employees are
12 often afraid to assert their rights out of fear of direct or indirect
13 retaliation. Former employees are fearful of bringing actions because
14 they believe their former employers might damage their future
15 endeavors through negative references and/or other means. Class
16 actions provide the class members who are not named in the complaint
17 with a type of anonymity that allows for the vindication of their rights
18 while simultaneously protecting their privacy.

19 **GENERAL ALLEGATIONS**

20 26. Defendants are a California corporation that manufactures various types of containers
21 for assorted goods at a facility located in Garden Grove, California. Within California,
22 Defendants are estimated to employ over 100 persons.

23 27. Upon information and belief, Defendants maintain a single, centralized Human
24 Resources department in Garden Grove, California, which is responsible for collecting and
25 processing all new hire paperwork, and communicating and implementing Defendants'
26 company-wide policies, including timekeeping policies and meal and rest break policies, to
27 employees throughout California.

28 28. In particular, Plaintiff and class members, on information and belief, received the same

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

7 29. On information and belief, all transactions regarding hiring, terminations, promotions,
8 pay increases, and employee transfers, etc., relating to Defendants' California employees were
9 submitted to and processed by Defendants' HR department in Garden Grove, California.
10 Additionally, on information and belief, Defendants' corporate records, business records, data,
11 and other information related to Defendants, including, in particular, HR records pertaining to
12 Defendants' California employees, are also maintained at Defendants' corporate headquarters
13 in Garden Grove, California.

14 30. Upon information and belief, Defendants maintain a centralized Payroll department in
15 Garden Grove, California, which processes payroll for all non-exempt, hourly-paid employees
16 working for Defendants at their various locations in California, including Plaintiff and class
17 members. Based upon information and belief, Defendants issued the same formatted wage
18 statements to all non-exempt employees in California, irrespective of their work location.
19 Upon information and belief, Defendants process payroll for departing employees in the same
20 manner throughout the State of California, regardless of the manner in which each employee's
21 employment ends.

22 31. Defendants continue to employ non-exempt, hourly-paid employees within California.

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

27 33. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members
28 were not paid for all hours worked because all hours worked were not recorded.

1 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
2 have known that Plaintiff and class members were entitled to receive certain wages for
3 overtime compensation and that they were not receiving certain wages for overtime
4 compensation.

5 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
6 have known that Plaintiff and class members were entitled to receive at least minimum wages
7 for compensation and that they were not receiving at least minimum wages for work that was
8 required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and class
9 members were not paid at least minimum wages for work done off-the-clock.

10 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
11 have known that Plaintiff and class members were entitled to meal periods in accordance with
12 the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when
13 they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that
14 Plaintiff and class members were not provided with all meal periods or payment of one (1)
15 additional hour of pay at their regular rates of pay when they did not receive a timely,
16 uninterrupted, thirty (30) minute meal period.

17 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
18 have known that Plaintiff and class members were entitled to rest periods in accordance with
19 the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay
20 at their regular rates of pay when they were not provided with a compliant rest period and that
21 Plaintiff and class members were not provided compliant rest periods or payment of one (1)
22 additional hour of pay at their regular rates of pay when they were not provided a compliant
23 rest period.

24 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
25 have known that Plaintiff and class members were entitled to receive complete and accurate
26 wage statements in accordance with California law. In violation of the California Labor Code,
27 Plaintiff and class members were not provided complete and accurate wage statements.

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

1 have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
5 have known that Plaintiff and class members were entitled to timely payment of all wages
6 earned upon termination of employment. In violation of the California Labor Code, Plaintiff
7 and class members did not receive payment of all wages due, including, but not limited to,
8 overtime wages, minimum wages, and meal and rest period premiums, within permissible
9 time periods.

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

15 42. Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
16 have known that Plaintiff and class members were entitled to receive reimbursement for all
17 business-related expenses and costs they incurred during the course and scope of their
18 employment, and that they did not receive reimbursement of applicable business-related
19 expenses and costs they incurred.

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

26 **Claims for Penalties Under 2004 Private Attorneys General Act**

27 44. The duties and business activities of the Aggrieved Employees were essentially the
28 same as the duties and activities of the Plaintiff described above.

1 45. This is a wage and hour representative action filed pursuant to PAGA, §§ 2698, 2699,
2 which generally consists of the following group:

3 **All current or former employees who worked in the state of California from**
4 **January 28, 2021 to the present for Defendants.**

5 46. All members of the represented groups will be referred to as the “Aggrieved
6 Employees.”

7 47. The “Representative Period” means from **January 28, 2021** to the present, the
8 timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

9 48. At all times during the Representative Period, all the Aggrieved Employees were
10 employed in the same or similar job as Plaintiff and were paid in the same manner and under
11 the same standard employment procedures and practices as the Plaintiff.

12 49. Plaintiffs further allege, and on information and belief, Aggrieved Employees, did not
13 receive all wages due at the time their employment ended with Defendants.

14 50. On information and belief, current and former employees of Defendants were subject
15 to wage and hour violations by Defendants, including failing to be paid for all wages due.

16 51. California law provides that an employee may file an action against an employer to
17 recover penalties for violations of the Labor Code and Wage Orders provided the aggrieved
18 employee files an action on behalf of him or herself and similarly-situated current and former
19 employees.

20 52. At all material times, Defendants and DOES 1 through 10 were and/or are Aggrieved
21 Employees’ employers or persons acting on behalf of Aggrieved Employees’ employer, within
22 the meaning of California Labor Code § 558, who violated or caused to be violated, a section
23 of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
24 of work in any Order of the Industrial Welfare Commission and, as such, are subject to
25 penalties for each underpaid employee as set for in Labor Code § 558.

26 53. As set forth in further detail below, because of the analysis and investigation of the
27 Plaintiffs’ claims, Plaintiffs’ attorneys sent letters to the California Labor and Workforce
28 Development Agency (hereinafter referred to as “LWDA”) and to Defendants informing

Defendants of their claims and their intent to pursue litigation.

Exhaustion of Administrative Remedies

54. As to penalty claims under the Labor Code Private Attorney General Act, on **January 28, 2022**, Plaintiff began to exhaust his administrative remedies by sending correspondence to the LWDA and Defendants indicating that Plaintiff is pursuing the claims alleged in this Complaint.

55. By the time an amended Complaint is filed, the statutory period for Plaintiff will have expired on the letter alleged above and the LWDA will likely not have served Plaintiff with notice of intent to assume jurisdiction over the applicable penalty claims and did not provide notice as set forth in Labor Code § 2699.3 (a)(2)(A) within the statutory period.

56. Therefore, Plaintiff will have exhausted Plaintiff's administrative remedies to enable Plaintiff to seek the penalty claims sought in this Complaint.

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

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

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

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

(a) The aggrieved employee shall give written notice by online filing

(hereinafter “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

(a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

(b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33)

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

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

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

13 64. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
14 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
15 general, seeks assessment and collection of civil penalties for himself, all other aggrieved
16 employees, and the State of California against Defendants, in addition to other remedies, for
17 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
18 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

19 **FIRST CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 21 **(Against all Defendants)**

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

24 66. California Labor Code section 1198 makes it illegal to employ an employee under
25 conditions of labor that are prohibited by the applicable wage order. California Labor Code
26 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
27 be the . . . standard conditions of labor for employees. The employment of any employee . . .
28 under conditions of labor prohibited by the order is unlawful.”

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

5 68. Specifically, the applicable IWC Wage Order provides that Defendants are and were
6 required to pay Plaintiff and class members working more than eight (8) hours in a day or
7 more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours
8 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

9 69. The applicable IWC Wage Order further provides that Defendants are and were
10 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
11 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
12 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
13 employee, including non-discretionary bonuses and incentive pay.

14 70. California Labor Code section 510 codifies the right to overtime compensation at one
15 and one-half times (1½) the regular rate of pay for hours worked in excess of eight (8) hours
16 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
17 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay
18 for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a
19 day on the seventh (7th) day of work.

20 71. For example, Plaintiff and other employees generally arrived 15 minutes prior to their
21 shifts every day in order to gather their materials and begin work when the "work start" bell
22 rung at the beginning of Plaintiff and the other employees' shifts. Additionally, Plaintiff and
23 other employees were instructed to clock out at their precisely scheduled shift end time, but
24 would do work after that time, including cleaning up their work station prior to the start of the
25 next day. This additional work before and after their shifts would usually take approximately
26 30 minutes, and occurred almost every day. If Plaintiff or another employee did not clock out
27 at their scheduled shift end time and instead clocked out after they completed their work at an
28 overtime rate, they risked being reprimanded by Defendants.

1 72. Accordingly, during the relevant time period, Defendants willfully failed to pay all
2 overtime wages owed to Plaintiff and class members. During the relevant time period,
3 Plaintiff and class members were not paid overtime premiums for all of the hours they worked
4 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess
5 of forty (40) hours in a week, because all hours worked were not recorded.

6 73. Because Plaintiff and class members regularly worked shifts of eight (8) hours a day or
7 more or forty (40) hours a week or more, some of this off-the-clock work qualified for
8 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages
9 for all of the overtime hours they actually worked.

10 74. Defendants' failure to pay Plaintiff and class members the balance of overtime
11 compensation and failure to include all applicable remuneration in calculating the regular rate
12 of pay for overtime pay, as required by California law, violates the provisions of California
13 Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff
14 and class members are entitled to recover their unpaid overtime compensation, as well as
15 interest, costs, and attorneys' fees.

16 **SECOND CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1—Unpaid Minimum** 18 **Wages** 19 **(Against All Defendants)**

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

22 76. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
23 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
24 to be paid to employees, and the payment of a wage less than the minimum so fixed is
25 unlawful. Compensable work time is defined in Wage Order No. 4 as “the time during which
26 an employee is subject to the control of an employer, and includes all the time the employee is
27 suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, §
28 11070(2)(G) (defining “Hours Worked”).

1 77. For example, Plaintiff and other employees generally arrived 15 minutes prior to their
2 shifts every day in order to gather their materials and begin work when the “work start” bell
3 rung at the beginning of Plaintiff and the other employees’ shifts. Additionally, Plaintiff and
4 other employees were instructed to clock out at their precisely scheduled shift end time, but
5 would do work after that time, including cleaning up their work station prior to the start of the
6 next day. This additional work before and after their shifts would usually take approximately
7 30 minutes, and occurred almost every day. If Plaintiff or another employee did not clock out
8 at their scheduled shift end time and instead clocked out after they completed their work at an
9 overtime rate, they risked being reprimanded by Defendants.

10 78. Thus, Defendants did not pay at least minimum wages for off-the-clock hours that
11 qualified for overtime premium payment. Also, to the extent that these off-the-clock hours
12 did not qualify for overtime premium payment, Defendants did not pay at least minimum
13 wages for those hours worked off-the-clock in violation of California Labor Code sections
14 1182.12, 1194, 1197, 1197.1, and 1198.

15 79. Defendants’ failure to pay Plaintiff and class members minimum wages violates
16 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
17 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
18 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

19 **THIRD CAUSE OF ACTION**

20 **Violations of California Labor Code, §§ 226.7 and 512(a)—Meal Period Violations** 21 **(Against all Defendants)**

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

24 81. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California
25 Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and class members’
26 employment by Defendants.

27 82. At all relevant times herein set forth, California Labor Code section 512(a) provides
28 that an employer may not require, cause, or permit an employee to work for a period of more

1 than five (5) hours per day without providing the employee with a meal period of not less than
2 thirty (30) minutes, except that if the total work period per day of the employee is not more
3 than six (6) hours, the meal period may be waived by mutual consent of both the employer
4 and the employee. Under California law, first meal periods must start after no more than five
5 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

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

9 84. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the
10 applicable IWC Wage Order also require employers to provide a second meal break of not less
11 than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
12 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
13 hours worked is no more than twelve (12) hours, the second meal period may be waived by
14 mutual consent of the employer and the employee only if the first meal period was not waived.
15 Under California law, an employer cannot evade meal break requirements via the use of "on-
16 duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*,
17 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

18 85. As stated, Defendants' policies prevented Plaintiff and class members from taking
19 compliant meal periods. Because of Defendants' practices and/or policies, Plaintiff and class
20 members were required to continue to perform their duties without being able to take a timely,
21 compliant meal period. Plaintiff and class members had to work through part or all of their
22 meal periods, have their meal periods interrupted, and/or wait extended periods of time before
23 taking meal periods.

24 86. Furthermore, Defendants did not provide Plaintiff and class members with second 30-
25 minute meal periods on days that they worked in excess of ten (10) hours in one day. Plaintiff
26 and class members did not sign valid meal break waivers on days that they were entitled to
27 meal periods and were not relieved of all duties.

28 87. Additionally, Defendants systematically and on a company-wide basis required that

1 Plaintiff and class members always record meal breaks, even when meal breaks were never
2 taken, or were late, short, and/or interrupted. As a result, 30-minute meal periods were
3 deducted from Plaintiff's and class members' time records for hours they actually spent
4 working.

5 88. Further, Labor Code section 1198 and the applicable wage order require that
6 employers record meal periods. Defendants violated Labor Code section 1198 and the
7 applicable wage order insofar as Defendants failed to correctly record when Plaintiff and class
8 members took meal periods, to the extent they were authorized and permitted to do so.

9 89. Moreover, Defendants engaged in a systematic, company-wide practice and/or policy
10 payoff not paying meal period premiums owed when compliant meal periods were not
11 provided. Defendants' company-wide policy was to treat noncompliant meals as "on duty"
12 meal periods instead of to pay meal period premiums.

13 90. Plaintiff and class members did not receive all required off-duty meal periods and did
14 not receive premium pay for missed meal periods. As a result, Defendants failed to provide
15 Plaintiff and class members compliant meal periods and failed to pay the full meal period
16 premiums due.

17 91. Defendants' conduct violates the applicable IWC Wage Order, and California Labor
18 Code sections 226.7, 512(a), and 1198. Plaintiff and class members are therefore entitled to
19 recover from Defendants one (1) additional hour of pay at the employee's regular rate of
20 compensation for each work day that the meal period was not provided or compensation in
21 lieu thereof was not paid.

22 **FOURTH CAUSE OF ACTION**

23 **Violation of California Labor Code § 226.7—Rest Break Violations**

24 **(Against all Defendants)**

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

27 93. At all relevant times herein set forth, the applicable IWC Wage Order and California
28 Labor Code sections 226.7 and 1198 were applicable to Plaintiff and class members'

employment by Defendants.

94. 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 (3½) hours.

95. 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 provide 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).

96. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), 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 provided.

97. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. Additionally, Defendants had no policy of scheduling rest periods for employees, which further impeded and prevented Plaintiff and class members from taking rest periods.

98. As a result, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of six (6) hours, and in excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, Plaintiff was not permitted to take a full and complete 10-minute rest period.

99. Defendants have also engaged in a company-wide practice and/or policy to not pay rest

1 period premiums owed when compliant rest periods are not provided. As a result, Plaintiff
2 and class members were denied rest periods and Defendants failed to pay the full rest period
3 premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

4 100. Defendants' conduct violates the applicable IWC Wage Order and California Labor
5 Code sections 226.7 and 1198. Pursuant to the applicable IWC Wage Order and California
6 Labor Code section 226.7(b), Plaintiff and class members are entitled to recover from
7 Defendants one (1) additional hour of pay at the employee's regular rate of compensation for
8 each work day that the rest period was not provided.

9 **FIFTH CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 226(a) and 1174(d)—Non-Compliant Wage** 11 **Statements and Failure to Maintain Accurate Payroll Records** 12 **(Against all Defendants)**

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

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

20 103. During the relevant time period, Defendants have knowingly and intentionally
21 provided Plaintiff and class members with uniform, incomplete, and inaccurate wage
22 statements. Specifically, Defendants violated sections 226. Because Defendants deducted
23 time worked from Plaintiff's and class members' wage statements and employment records
24 for meal periods they did not actually receive, *infra*, the result of which was an unlawful
25 deduction of wages earned and meal period premiums that should have been paid. Thus,
26 Defendants did not furnish wage statements to Plaintiff and class members containing
27 accurate totals of the hours worked (Lab. Code § 226(a)(2)), the number of hours worked at
28 each hourly rate (Lab. Code § 226(a)(9), the net wages earned (Lab. Code § 226(a)(5)) and

gross wages earned (Lab. Code § 226(a)(1)).

104. 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...” During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and class members 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 by failing to correctly list the gross wages and net wages earned by them.

105. 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 Orders. 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, Defendants failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Plaintiff and class members, in violation of section 1198.

106. Because Defendants failed to provide the accurate number of total hours worked, and the gross wages earned, and net wages earned on wage statements, Plaintiff and class members have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Plaintiff and class members 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.

1 107. Plaintiff and class members are entitled to recover from Defendants the greater of their
2 actual damages caused by Defendants' failure to comply with California Labor Code section
3 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

4 **SIXTH CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon**
6 **Termination**
7 **(Against all Defendants)**

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

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

17 110. During the relevant time period, Defendants willfully failed to pay Plaintiff and class
18 members all wages earned upon their discharge or resignation. Additionally, Defendant
19 willfully failed to pay Plaintiff and other class members who are no longer employed by
20 Defendants all their earned wages set forth above, including but not limited to, overtime
21 wages, minimum wages, meal and rest period premium wages either at the time of discharge,
22 or within seventy-two (72) hours of their leaving Defendants' employ.

23 111. Defendants' failure to pay Plaintiff and those class members who are no longer
24 employed by Defendants their wages earned and unpaid at the time of discharge, or within
25 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
26 and 202.

27 112. Plaintiff and class members are therefore entitled to recover from Defendants the
28 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 § 2802 – Unpaid Business-Related Expenses

(Against all Defendants)

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

114. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees 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 4-2001, 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.”

115. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and class members use their own personal cell phone to perform business related tasks. Defendants failed to reimburse Plaintiff and other employees for those costs.

116. Defendants engaged in a systematic, company-wide policy to not reimburse its employees for necessary business expenses. Defendants could have provided Plaintiff and class members with the actual tools for use on the job, including company phones, or reimbursed employees for their cell phone usage, but instead, Defendants passed these operating costs off onto Plaintiff and class members.

117. Defendants’ company-wide policy and/or practice of passing its operating costs on to Plaintiff and class members is in violation of California Labor Code section 2802. Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for

1 necessary business-related expenses and costs.

2 118. Plaintiff and class members are entitled to recover from Defendants their business-
3 related expenses incurred during the course and scope of their employment, plus interest.

4 **EIGHTH CAUSE OF ACTION**

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

6 **(Against all Defendants)**

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

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

11 121. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil
12 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
13 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
14 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits
15 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
16 Labor Code sections not found in section 2699.5, including sections 1182.12.

17 122. Defendants’ conduct, as alleged herein, violates numerous sections of the California
18 Labor Code, including, but not limited to, the following:

- 19 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
20 wage order for Defendants’ failure to compensate Plaintiff and other
21 aggrieved employees with all required overtime pay as alleged herein;
- 22 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
23 and the applicable IWC wage order for Defendants’ failure to
24 compensate Plaintiff and other aggrieved employees with at least
25 minimum wages for all hours worked as alleged herein;
- 26 (c) Violation of Labor Code sections 226.7, 512, 1198, and the applicable
27 IWC wage order for Defendants’ failure to provide Plaintiff and other
28 aggrieved employees with meal and/or rest periods, as alleged herein;

- (d) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (e) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (f) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein; and
- (h) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

123. At all relevant times herein set forth, 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. Labor Code section 204 further provides 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.

124. At all relevant times herein, 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, at all relevant times herein, 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.

125. During the relevant time period, Defendants willfully failed to pay Plaintiff and other

aggrieved employees all wages due to them within any time period specified by California Labor Code section 204 including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wage. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

NINTH CAUSE OF ACTION

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

Unlawful Business Practices

(Against all Defendants)

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

127. Defendants are a “person” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies and/or associations.

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

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

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

- (a) Requiring non-exempt employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the

1 applicable IWC Order and paying overtime at a lower rate than required
2 by law, as alleged herein;

3 (b) Failing to pay at least minimum wage to Plaintiff and class members in
4 violation of California Labor Code sections 1182.12, 1194, 1197 and
5 1197.1 and the applicable IWC Order, as alleged herein;

6 (c) Failing to provide uninterrupted meal and rest periods to Plaintiff and
7 class members in violation of California Labor Code sections 226.7 and
8 512 and the applicable IWC Order, as alleged herein;

9 (d) Failing to provide Plaintiff and class members with accurate wage
10 statements in violation of California Labor Code section 226(a) and the
11 applicable IWC Order and failing to maintain accurate payroll records in
12 violation of Labor Code section 1174(d), as alleged herein;

13 (e) Failing timely to pay all earned wages to Plaintiff and class members in
14 violation of California Labor Code section 204 and the applicable IWC
15 Order, as alleged herein; and

16 (f) Failing to reimburse Plaintiff and class members for all business
17 expenses necessarily incurred in violation of California Labor Code
18 section 2802, as alleged herein.

19 131. As a result of the violations of California law herein described, Defendants
20 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
21 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
22 herein.

23 132. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
24 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
25 Defendants during a period that commences four years prior to the filing of this complaint; a
26 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
27 class members; an award of attorneys' fees pursuant to California Code of Civil Procedure
28 section 1021.5 and other applicable laws; and an award of costs.

1 **TENTH CAUSE OF ACTION**

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

3 **Unfair Business Practices**

4 **(Against all Defendants)**

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

7 134. Defendants are a “person” as defined by California Business & Professions Code
8 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
9 associations.

10 135. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
11 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
12 fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to
13 enforce important rights affecting the public interest within the meaning of Code of Civil
14 Procedure section 1021.5.

15 136. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of
16 not paying Plaintiff and class members all meal and rest period premium wages due to them
17 under Labor Code section 226.7, deprived Plaintiff and class members of the compensation
18 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
19 provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate
20 employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238
21 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
22 Plaintiff and class members as part of their employment with Defendants, and thus
23 Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair
24 business practice in violation of California Business & Professions Code sections 17200, *et*
25 *seq.* (Id.)

26 137. A violation of California Business & Professions Code sections 17200, *et seq.* may be
27 predicated on any unfair business practice. In the instant case, Defendants’ policies and
28 practices have violated the spirit of California’s meal and rest break laws and constitute acts

1 against the public policy behind these laws.

2 138. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff
3 and class members are entitled to restitution for the class-wide loss of the statutory benefits
4 implemented by section 226.7 withheld and retained by Defendants during a period that
5 commences four years prior to the filing of this complaint; a permanent injunction requiring
6 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and
7 class members; an award of attorneys' fees pursuant to California Code of Civil Procedure
8 section 1021.5 and other applicable laws; and an award of costs

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

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

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

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

18 3. That Plaintiff be appointed as the representative of the Class and subclass;

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

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

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

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

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

28 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to

1 California Labor Code section 1194(a); and

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

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

5 10. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
7 minimum wages to Plaintiff and class members;

8 11. For general unpaid wages and such general and special damages as may be
9 appropriate;

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

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

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

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

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

18 16. That the Court declare, adjudge, and decree that Defendants violated California
19 Labor Code sections 226.7, 512(a), and 1198 and applicable IWC Wage Order(s) by willfully
20 failing to provide all meal periods to Plaintiff and class members;

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

24 18. For all actual, consequential, and incidental losses and damages, according to
25 proof;

26 19. For premiums pursuant to California Labor Code section 226.7(b);

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

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 1198 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and class members;

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

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

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

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

28. For attorneys' fees pursuant to California Code of Civil Procedure section 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 applicable IWC Wage Orders as to Plaintiff and class 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);

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

2 34. For attorneys' fees and costs pursuant to California Labor Code section
3 226(e)(1); and

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

6 **As to the Sixth Cause of Action**

7 36. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 201, 202, and 203 by willfully failing to pay overtime wages, minimum
9 wages, meal and rest period premiums, and bonus pay, owed at the time of termination of the
10 employment of Plaintiff and other terminated class members;

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

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

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

17 40. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

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

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

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

25 2. For unpaid business-related expenses and such general and special damages as
26 may be appropriate;

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

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

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

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

As to the Eighth Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512 and 1198 (by failing to provide all meal and rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); and 2802 (by failing to reimburse business expenses).

2. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

3. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

As to the Ninth Cause of Action

1. That the Court declare, adjudge and decree that Defendants conduct of failing

1 to provide Plaintiff and class members all overtime wages due to them, failing to provide
2 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
3 class members all meal and rest periods, failing to provide Plaintiff and class members
4 accurate and complete wage statements, failing to maintain accurate payroll records for
5 Plaintiff and class members, failing timely to pay Plaintiff and class members all earned
6 wages during employment, failing to reimburse Plaintiff and class members for business-
7 related expenses, and failing to provide written notice of information material to employment,
8 constitutes an unlawful business practice in violation of California Business and Professions
9 Code sections 17200, *et seq.*;

10 2. For restitution of unpaid wages to Plaintiff and all class members and
11 prejudgment interest from the day such amounts were due and payable;

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

16 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Code of Civil Procedure section 1021.5; and

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

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

21 6. That the Court declare, adjudge and decree that Defendants' conduct of denying
22 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
23 an unfair business practice in violation of California Business and Professions Code sections
24 17200, *et seq.*;

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

28 8. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections 17200
3 *et seq.*;

4 9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
5 California Code of Civil Procedure section 1021.5;

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

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

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10 Dated: January 28, 2022

Respectfully submitted,

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