

Electronically Filed
1/14/2022 3:54 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Maleia Juan, Deputy

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
Fax: (951) 320-1445

\$435 PAID

\$1000 NOT PAID

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

NICHOLAS TOSTA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FORMULATION TECHNOLOGY
INCORPORATED, a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CV-22-000189

**CLASS AND REPRESENTATIVE
COMPLAINT**

CLASS ACTION CLAIMS

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

PAGA CLAIMS

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

JURY TRIAL DEMANDED

Sandhu, Sonny S.

This case has been assigned to Judge
Dept. 24 _____
Department _____, for all purposes including Trial.

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

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

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

12 2. Plaintiff was employed by Defendants from approximately 2015 through June
13 2021.

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

17 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
18 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
19 worked. As one such example, Defendants required Plaintiff and the Represented Employees to
20 undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However,
21 because this time was spent under Defendants’ control but before being allowed to clock in, it
22 was uncompensated in violation of California law and led to minimum and overtime wage
23 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es]
24 not allow employers to require employees to routinely work for minutes off the clock without
25 compensation”).

26 5. Furthermore, Defendants failed to pay proper overtime to Plaintiff and the
27 Represented Employees. For example, Defendants paid Plaintiff and the Represented
28 Employees on an hourly basis but also paid additional earned compensation and/or bonuses.

1 However, during workweeks where the Represented Employees worked overtime hours and
2 earned additional nondiscretionary compensation and/or bonuses, Defendants failed to properly
3 include that compensation in the calculations for the regular rate of pay – violating the well-
4 established rule that overtime must always be paid at time and one-half the regular rate of pay.

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

12 7. Defendants also failed to provide Plaintiff and the Represented Employees with
13 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
14 mandated by California law. Defendants did not schedule rest breaks for Plaintiff and the
15 Represented Employees, the Represented Employees were unable to leave the premises for
16 breaks, and the Represented Employees were often not authorized and/or permitted to take
17 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
18 occasions when Plaintiff and the Represented Employees worked longer shifts, Defendants failed
19 to authorize and/or permit mandated third or fourth rest breaks.

20 8. Plaintiff also alleges that he and the Represented Employees were not paid all
21 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
22 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
23 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
24 Employees at the time their employment ended with Defendants, including, but not limited to
25 minimum, regular, and overtime wages, wage premiums, among others.

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

28 ///

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

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

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

18 **II. JURISDICTION**

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

21 **III. VENUE**

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

27 ///

28 ///

1 **IV. PARTIES**

2 **Plaintiff**

3 15. Plaintiff and Class Representative Nicholas Tosta was employed by Defendants
4 from approximately 2015 through June 2021 and performed work for Defendants in Stanislaus
5 County.

6 **Defendants**

7 16. Plaintiff is informed and believes and thereon alleges that Defendant Formulation
8 Technology Incorporated is a California corporation authorized to and doing business in
9 Stanislaus County, California. Plaintiff is also informed and believes that Defendant
10 Formulation Technology Incorporated is and/or was the legal employer of Plaintiff and the
11 Represented Employees during the applicable statutory periods.

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

19 18. Plaintiff is informed and believes and thereon alleges that he and the Represented
20 Employees worked under the joint direction and control of Defendants and that Defendants, and
21 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
22 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
23 each Defendant are legally attributable to the other Defendants. On information and belief, a
24 unity of interest and ownership between each Defendant exists such that all Defendants acted as
25 a single employer of Plaintiff and other Represented Employees.

26 19. Furthermore, Plaintiff is informed and believes and thereon alleges that
27 Defendants, and each of them, are an integrated enterprise and should be treated as a single
28 employer because these entities share an interrelation of operations, with common human

resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

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

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

V. CLASS ACTION ALLEGATIONS

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

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

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

///

1 25. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
2 represent is defined as follows:

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

5 26. Plaintiff also seeks to represent the following subclasses:

6 **Meal Break Subclass**

7 All Represented Employees who worked a shift in excess of
8 5 hours during the Relevant Time Period.

9 **Rest Break Subclass**

10 All Represented Employees who worked a shift of at least
11 3.5 hours during the Relevant Time Period.

12 **Waiting Time Penalties Subclass**

13 All Represented Employees who separated from their
14 employment with Defendants during the period three years
15 before the filing of this action and ending when final
16 judgment is entered.

17 **Wage Statement Penalties Subclass**

18 All Represented Employees during the period one year
19 before the filing of this action and ending when final
20 judgment is entered.

21 27. Plaintiff reserves the right to amend or modify the class description with greater
22 specificity or further division into subclasses or limitation to particular issues as appropriate.

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

25 29. This action has been brought and may properly be maintained as a class action
26 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
27 litigation and the proposed class is easily ascertainable from Defendants’ records.

28 ///

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

4 31. **Commonality:** There are questions of law and fact common to the class which
5 predominate over any questions affecting only individual members of the class, including
6 without limitation:

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

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

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

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

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

26 vi. Whether Defendants violated the California Labor Code by failing to
27 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
28 wage statements;

vii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

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

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

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

34. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

///

///

///

///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 *Plaintiff and the Represented Employees Against All Defendants*

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

7 36. Plaintiff and the Represented Employees were not exempt from the requirement
8 to be paid at least the applicable California minimum wage throughout the statutory period for
9 each hour worked.

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

15 38. For example, Defendants required Plaintiff and the Represented Employees to
16 undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However,
17 because this time was spent under Defendants' control but before being allowed to clock in, it
18 was uncompensated in violation of California law and led to minimum wage violations. See
19 *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow
20 employers to require employees to routinely work for minutes off the clock without
21 compensation").

22 39. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
23 Represented Employees for all hours worked.

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

27 ///

28 ///

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

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

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

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

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

Plaintiff and the Represented Employees Against All Defendants

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

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

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

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

11 51. For example, Defendants required Plaintiff and the Represented Employees to
12 undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However,
13 because this time was spent under Defendants' control but before being allowed to clock in, it
14 was uncompensated in violation of California law and led to overtime wage violations. See
15 *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow
16 employers to require employees to routinely work for minutes off the clock without
17 compensation").

18 52. Additionally, Defendants paid Plaintiff and the Represented Employees on an
19 hourly basis but also paid additional earned compensation and/or bonuses. However, during
20 workweeks where the Represented Employees worked overtime hours and earned additional
21 nondiscretionary compensation and/or bonuses, Defendants failed to properly include that
22 compensation in the calculations for the regular rate of pay – violating the well-established rule
23 that overtime must always be paid at time and one-half the regular rate of pay.

24 53. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
25 Represented Employees for all overtime hours worked.

26 54. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
27 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
28 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per

1 week without proper overtime compensation.

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

24 61. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
25 alleged herein.

26 62. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
27 who did not receive proper protections and benefits of the laws governing mandatory meal
28 periods.

1 63. Labor Code § 226.7 requires employers, including Defendants, to provide
2 employees with meal periods as mandated by the Industrial Welfare Commission.

3 64. Labor Code § 512(a), in part, provides that employers, including Defendants, may
4 not employ an employee for a work period of more than five hours per day without providing an
5 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
6 except that if the total work period per day of the employee is no more than six hours, the meal
7 period may be waived by mutual consent of both the employer and the employee. Employers
8 may not employ an employee for a work period more than 10 hours per day without providing
9 the employee with a second meal period of not less than 30 minutes.

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

13 66. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied
14 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
15 practices, Plaintiff and the Represented Employees were subjected to meal period violations
16 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty
17 meal period while under the control of the Company, (3) forced to take a shortened meal period,
18 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
19 second meal periods for shifts in excess of 10 hours.

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

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

27 69. On information and belief, Plaintiff and the Meal Break Subclass did not
28 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
2 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
3 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
4 to take meal periods in accordance with California law.

5 70. By their failure to provide Plaintiff and the Meal Break Subclass with meal
6 periods as required by California law, and failing to pay one hour of additional wages in lieu of
7 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
8 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
9 the employee's regular rate of compensation for each work day that a meal period was not
10 lawfully provided in an amount to be proven at time of trial.

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REST BREAKS**

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

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

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

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

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

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

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

4 77. At all relevant times, Defendants also failed to provide Plaintiff and the Rest
5 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
6 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
7 Rest Break Subclass, the Rest Break Subclass were unable to leave the premises for breaks, and
8 the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks
9 due to being overwhelmed by their hectic workload. Furthermore, on occasions when the Rest
10 Break Subclass worked longer shifts, Defendants failed to authorize and/or permit mandated
11 third or fourth rest breaks.

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

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

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

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

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

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

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

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

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass against All Defendants

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

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

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

93. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Wage Statement Penalties Subclass due to violations including: failure to accurately state total hours worked (for example, the wage statements failed to accurately reflect the compensable hours spent in temperature checks); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the inclusive dates of the pay period; and failure to accurately state the corresponding number of hours worked at each hourly rate.

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

1 requirements of Labor Code § 226(a).

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

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

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

24 98. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
25 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
26 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
27 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
28 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the

1 applicable penalty is all in an amount to be shown according to proof at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **UNFAIR AND UNLAWFUL COMPETITION**

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

5 *Plaintiff and the Represented Employees against All Defendants*

6 99. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 100. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
9 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
10 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
11 due to the unfair and unlawful business practices of Defendants as alleged herein.

12 101. Defendants, and each of them, are “persons” as defined under Business &
13 Professions Code § 17021.

14 102. As alleged herein, Defendants engaged in conduct that violated California’s wage
15 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
16 mandated meal periods and rest breaks, and failure to timely pay wages upon separation of
17 employment, all to decrease their costs and increase profits.

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

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

24 105. Defendants’ violations of the California Labor Code and IWC Wage Orders and
25 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
26 practices because it was done in a systematic manner over a period of time to the detriment of the
27 Plaintiff and all others similarly-situated.

28 ///

1 106. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
3 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
4 of Civil Procedure § 1021.5.

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

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

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

24 110. Plaintiff, individually, and on behalf of the Represented Employees, is further
25 entitled to and do seek a declaration that the above described business practices are unfair,
26 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
27 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
28 the future.

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

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

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

15 113. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
16 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
17 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
18 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
19 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

20 114. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing
21 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
22 Defendants of the specific provisions of the Labor Code alleged to have been violated, including
23 the facts and theories to support the alleged violations. Once more than sixty-five (65) days have
24 passed since the date gave notice, Plaintiff will have fully satisfied the administrative
25 prerequisites to suit under the PAGA and this Complaint will be deemed amended to include the
26 PAGA allegations enumerated below.

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

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

4 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

10 117. Plaintiff and the Aggrieved Employees were not provided proper minimum and
11 regular wages due to Defendants' failure to accurately record and compensate for all hours
12 worked.

13 118. For example, Defendants required Plaintiff and the Aggrieved Employees to
14 undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However,
15 because this time was spent under Defendants' control but before being allowed to clock in, it
16 was uncompensated in violation of California law and led to minimum wage violations. See
17 *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow
18 employers to require employees to routinely work for minutes off the clock without
19 compensation").

20 119. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
21 Aggrieved Employees for all hours worked.

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

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

28 ///

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

4 **NINTH CAUSE OF ACTION**

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

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

7 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

22 127. For example, Defendants required Plaintiff and the Aggrieved Employees to
23 undergo mandatory COVID-19 screening prior to clocking in for payroll purposes. However,
24 because this time was spent under Defendants' control but before being allowed to clock in, it
25 was uncompensated in violation of California law and led to overtime wage violations. See
26 *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow
27 employers to require employees to routinely work for minutes off the clock without
28 compensation").

1 128. Additionally, Defendants paid Plaintiff and the Aggrieved Employees on an
2 hourly basis but also paid additional earned compensation and/or bonuses. However, during
3 workweeks where the Aggrieved Employees worked overtime hours and earned additional
4 nondiscretionary compensation and/or bonuses, Defendants failed to properly include that
5 compensation in the calculations for the regular rate of pay – violating the well-established rule
6 that overtime must always be paid at time and one-half the regular rate of pay.

7 129. As a result of this policy and practice, Defendants failed to pay Plaintiff and the
8 Aggrieved Employees for all overtime hours worked.

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

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

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

19 **TENTH CAUSE OF ACTION**

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

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

22 *Plaintiff and the Aggrieved Employees against All Defendants*

23 133. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 134. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing mandatory meal
27 periods.

28 ///

1 135. Labor Code § 226.7 requires employers, including Defendants, to provide
2 employees with meal periods as mandated by the Industrial Welfare Commission.

3 136. Labor Code § 512(a), in part, provides that employers, including Defendants, may
4 not employ an employee for a work period of more than five hours per day without providing an
5 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
6 except that if the total work period per day of the employee is no more than six hours, the meal
7 period may be waived by mutual consent of both the employer and the employee. Employers
8 may not employ an employee for a work period more than 10 hours per day without providing
9 the employee with a second meal period of not less than 30 minutes.

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

13 138. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
14 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
15 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
16 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal
17 period while under the control of the Company, (3) forced to take a shortened meal period, (4)
18 forced to take a meal period after the 5th hour of work, and (5) not provided mandated second
19 meal periods for shifts in excess of 10 hours.

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

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

1 Employees to take meal periods in accordance with California law.

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

5 **ELEVENTH CAUSE OF ACTION**

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

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

8 *Plaintiff and the Aggrieved Employees against All Defendants*

9 142. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
10 alleged herein.

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

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

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

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

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

1 Aggrieved Employees worked longer shifts, Defendants failed to authorize and/or permit
2 mandated third or fourth rest breaks.

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

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

10 **TWELFTH CAUSE OF ACTION**

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

12 (Labor Code § 204)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

8 **THIRTEENTH CAUSE OF ACTION**

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

10 (Labor Code §§ 201 – 203 and 256)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

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

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

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

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

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

7 **FOURTEENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR**

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

10 (Labor Code § 226)

11 *Plaintiff and the Aggrieved Employees against All Defendants*

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

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

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

23 167. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
24 and the Aggrieved Employees because due to violations including: failure to accurately state
25 total hours worked (for example, the wage statements failed to accurately reflect the
26 compensable hours spent in temperature checks); failure to accurately state gross wages earned;
27 failure to accurately state all deductions; failure to accurately state net wages earned; failure to
28 state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the

1 inclusive dates of the pay period; and failure to accurately state the corresponding number of
2 hours worked at each hourly rate.

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

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

12 **VII. PRAYER FOR RELIEF**

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

- 16 1. That the First through Seventh Causes of Action be certified as a class action;
- 17 2. That Plaintiff be appointed as Class Representative;
- 18 3. That counsel for Plaintiff be appointed Class Counsel;
- 19 4. For all applicable statutory penalties recoverable under the First through Seventh
20 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
21 Orders of the Industrial Welfare Commission;
- 22 5. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
23 law, including those pursuant to the Labor Code;
- 24 6. For injunctive relief and/or restitution as provided by the Labor Code and
25 Business and Professions Code § 17200, *et seq.*;
- 26 7. As to the Eighth through Fourteenth Causes of Action, the assessment of all
27 applicable and available remedies under the PAGA;
- 28 8. For reasonable attorneys' fees and costs as permitted under the PAGA;

1 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
2 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1198,
3 and 1199, among other sections inadvertently omitted;

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

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

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

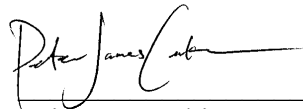
9 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: January 14, 2022

LAUBY, MANKIN & LAUBY LLP

14
15 BY:



16 Brian J. Mankin, Esq.
17 Peter J. Carlson, Esq.
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28