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 of all others similarly situated.

FILED
 Superior Court of California
 County of Los Angeles
07/01/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Martinez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ABEL LEMUZ SANCHEZ, individually
 and on behalf of all others similarly
 situated,

Plaintiff,

v.

EVANS FOOD GROUP LTD.; and DOES
 1 through 20, inclusive,

Defendants.

Case No. 22STCV02207

*Assigned for All Purposes to:
 Judge Kenneth R. Freeman; Dept. 14*

**[Amended as a matter of right, pursuant to
 Labor Code section 2699.3(a)(2)(C)]**

**FREE AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Pay All Wages to Commission-Only or Piece-Rate Workers
6. Failure to Reimburse Business Expenses;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Pay All Wages Due Upon Separation of Employment;
9. Violation of Business and Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Abel Lemuz Sanchez, individually, and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Abel Lemuz Sanchez (“Plaintiff”) brings this putative class action and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendant Evans Food Group LTD., and DOES 1 through 20, inclusive
7 (collectively, “Defendants”), on Plaintiff’s own behalf and on behalf of California citizens who
8 are and were employed by Defendants as non-exempt employees or employees paid in whole or
9 in part on a commission or piece rate basis throughout California.

10 2. Defendants are in the business of operating grocery stores.

11 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic
12 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
13 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
14 competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime wages);
 - 18 (b) failing to pay wages for non-productive time, including time spent in rest
19 breaks;
 - 20 (c) failing to provide lawful meal periods or compensation in lieu thereof;
 - 21 (d) failing to authorize or permit lawful rest breaks or provide compensation
22 in lieu thereof;
 - 23 (e) failing to pay wages to commission or piece-rate workers for non-
24 productive time or time spent in rest breaks and/or recovery periods;
 - 25 (f) failing to reimburse necessary business-related costs;
 - 26 (g) failing to provide accurate itemized wage statements; and
 - 27 (h) failing to pay all wages due upon separation of employment.
- 28

1 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
2 others similarly situated in California to recover, among other things, unpaid wages, un-
3 reimbursed business expenses, benefits, interest, attorneys' fees, costs and expenses, and
4 penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512,
5 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, and
6 Code of California Civil Procedure § 1021.5.

7 **JURISDICTION AND VENUE**

8 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
9 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of
10 the Superior Court and will be established according to proof at trial.

11 7. This Court has jurisdiction over this action pursuant to the California
12 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes
13 except those given by statutes to other courts. The statutes under which this action is brought do
14 not specify any other basis for jurisdiction.

15 8. This Court has jurisdiction over all Defendants because, upon information and
16 belief, they are citizens of California, have sufficient minimum contacts in California, or
17 otherwise intentionally avail themselves of the California market so as to render the exercise of
18 jurisdiction over them by the California courts consistent with traditional notions of fair play and
19 substantial justice.

20 9. Venue is proper in this Court because, upon information and belief, Defendants
21 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
22 took place in this county.

23 **THE PARTIES**

24 10. Plaintiff is a resident of California and worked for Defendants during the relevant
25 time periods as alleged herein.

26 11. Plaintiff is informed and believes, and thereon alleges, that at all times hereinafter
27 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
28

1 employers, whose employees were and are engaged throughout this county and the State of
2 California.

3 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
4 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
5 Complaint and serve such fictitiously named defendants once their names and capacities become
6 known.

7 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
8 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
9 all relevant times.

10 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
11 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
12 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
13 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
14 employer and/or joint employer of Plaintiff and the class members.

15 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
16 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
17 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
18 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
19 official policy of Defendants.

20 16. At all relevant times, Defendants, and each of them, acted within the scope of
21 such agency or employment, or ratified each and every act or omission complained of herein. At
22 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
23 each and all the other Defendants in proximately causing the damages herein alleged.

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

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28 ///

1 **CLASS ACTION ALLEGATIONS**

2 18. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's own
3 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
4 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

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

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

8 Class

9 All California residents currently or formerly employed by Defendants in the
10 State of California as non-exempt employees or employees paid in whole or in
11 part on a commission or piece rate basis at any time between July 25, 2017¹ and
12 the date of class certification ("Class").

13 21. Plaintiff also seeks to certify the following subclasses of employees:

14 Waiting Time Subclass

15 All members of the Class who separated their employment with Defendants at any
16 time between July 25, 2018 and the date of class certification ("Waiting Time
17 Subclass").

18 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
19 subclasses, or modify or re-define any class or subclass definition as appropriate based on
20 investigation, discovery, and specific theories of liability.

21 23. Members of the Class and the Waiting Time Subclass described above will be
22 collectively referred to as "Class Members."

23 24. There are common questions of law and fact as to the Class Members that
24 predominate over any questions affecting only individual members including, but not limited to,
25 the following:

26 _____
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- 1 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
2 (including minimum wages and overtime wages) for all hours worked by
3 Plaintiff and Class Members.
- 4 (b) Whether Defendants required Plaintiff and Class Members to work over
5 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
6 (40) hours per week and failed to pay them overtime compensation for all
7 overtime hours worked.
- 8 (c) Whether Defendants deprived Plaintiff and Class Members of timely meal
9 periods or required Plaintiff and Class Members to work through meal
10 periods without legal compensation.
- 11 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks
12 or required Plaintiff and Class Members to work through rest breaks.
- 13 (e) Whether Defendants failed to pay all wages to commission or piece-rate
14 employees for non-productive time, including time spent in rest breaks.
- 15 (f) Whether Defendants failed to reimburse Plaintiff and Class Members for
16 necessary business-related costs expended for the benefit of Defendants.
- 17 (g) Whether Defendants failed to provide Plaintiff and Class Members
18 accurate itemized wage statements.
- 19 (h) Whether Defendants failed to timely pay the Waiting Time Subclass all
20 wages due upon termination or within seventy-two (72) hours of
21 resignation.
- 22 (i) Whether Defendants' conduct was willful or reckless.
- 23 (j) Whether Defendants engaged in unfair business practices in violation of
24 Business and Professions Code §§ 17200, *et seq.*

25 25. There is a well-defined community of interest in this litigation and the proposed
26 Class and subclasses are readily ascertainable:

27 (a) Numerosity: The Class Members are so numerous that joinder of all
28 members is impractical. Although the members of the Class are unknown to Plaintiff at this time,

1 on information and belief, the Class is estimated to be greater than fifty (50) individuals. The
2 identities of the Class Members are readily ascertainable by inspection of Defendants'
3 employment and payroll records.

4 (b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims
5 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
6 provisions of California's wage and hour laws entitled each Class Member to similar pay,
7 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
8 sustained by the Class Members, because they arise out of and are caused by Defendants'
9 common course of conduct as alleged herein.

10 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
11 interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims
12 alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed
13 class counsel, are competent and experienced in litigating large employment class actions and
14 versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
15 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
16 costs that have been and will be necessarily expended for the prosecution of this action for the
17 substantial benefit of the Class Members.

18 (d) Superiority: The nature of this action makes use of class action
19 adjudication superior to other methods. A class action will achieve economies of time, effort, and
20 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
21 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
22 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
23 to efficiently manage this case as a class action.

24 (e) Public Policy Considerations: Employers in the State of California violate
25 employment and labor laws every day. Current employees are often afraid to assert their rights
26 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
27 because they believe their former employers might damage their future endeavors through
28 negative references and/or other means. Class actions provide class members who are not named

1 in the complaint with a type of anonymity that allows for the vindication of their rights while
2 affording them privacy protections.

3 **GENERAL ALLEGATIONS**

4 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
5 California citizens as non-exempt employees or employees paid in whole or in part on a
6 commission or piece rate basis throughout California at Defendants' California business
7 location(s).

8 27. Defendants continue to employ non-exempt employees or employees paid in
9 whole or in part on a commission or piece rate basis within California.

10 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
12 were knowledgeable about California's wage and hour laws, employment and personnel
13 practices, and the requirements of California law.

14 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and Class Members were entitled to receive wages for all time
16 worked (including minimum wages and overtime wages) and that they were not receiving all
17 wages earned for work that was required to be performed. In violation of the Labor Code and
18 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
19 wages and overtime wages) for all hours worked, including, but not limited to, non-productive
20 time, as well as when Defendants required Plaintiff and Class Members to work off-the-clock,
21 through meal periods, and during off-duty hours, but failed to compensate Plaintiff and Class
22 Members for these hours. Further Defendants failed to properly calculate the overtime rate owed
23 to Plaintiff and Class Members due to failure to properly included commissions, bonuses, and/or
24 piece rate. Defendant also misclassified employees as exempt and paid them a salary or daily
25 wage rather than paying minimum wage and overtime wages.

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and Class Members were entitled to receive all required meal
28 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular

1 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
2 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal periods
3 or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of
4 pay when they did not receive a timely, uninterrupted meal period.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
7 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
8 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage
9 Orders, Plaintiff and Class Members did not receive all rest breaks or payment of one (1)
10 additional hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest break
11 was missed, late, or interrupted.

12 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known they had a duty to separately compensate Plaintiff and Class Members who
14 were commission or piece-rate workers for time spent on non-productive tasks and during rest
15 breaks. In violation of the Labor Code, Defendants did not pay commission or piece-rate workers
16 separately for time spent on non-productive tasks and during rest breaks.

17 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Class Members were entitled to reimbursement and/or
19 indemnification for all necessary business expenditures or losses as a direct consequence of the
20 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
21 Labor Code and IWC Wage Orders, Plaintiff and Class Members incurred necessary business
22 expenses or losses, but were not reimbursed nor indemnified of such expenses or losses that were
23 incurred as a direct consequence of the discharge of their duties, or of their obedience to the
24 directions of Defendants.

25 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Class Members were entitled to receive itemized wage
27 statements that accurately showed the following information pursuant to the Labor Code: (1)
28 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units

1 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
2 deductions, provided that all deductions made on written orders of the employee may be
3 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
4 which the employee is paid; (7) the name of the employee and only the last four digits of his or
5 her social security number or an employee identification number other than a social security
6 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
7 hourly rates in effect during the pay period and the corresponding number of hours worked at
8 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
9 were not provided with accurate itemized wage statements.

10 35. Defendants knew or should have known that the Waiting Time Subclass was
11 entitled to timely payment of wages due upon separation of employment. In violation of the
12 Labor Code, the Waiting Time Subclass did not receive payment of all wages within the
13 permissible time periods.

14 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known they had a duty to compensate Plaintiff and Class Members, and Defendants
16 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
17 failed to do so in order to increase Defendants' profits.

18 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
19 against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover,
20 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
21 period premium payments, unpaid rest period premium payments, un-reimbursed business
22 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

25 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order)

26 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.
28

1 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
2 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
3 wage than the minimum so fixed is unlawful.

4 40. Plaintiff and Class Members were employees entitled to the protections of Labor
5 Code §§ 1194 and 1197.

6 41. During the relevant time period, Defendants failed to pay Plaintiff and Class
7 Members all wages owed when Defendants did not pay for all hours worked at the correct rate of
8 pay.

9 42. During the relevant time period, Defendants failed to pay at least minimum wage
10 to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

11 43. Defendants' failure to pay Plaintiff and Class Members the required minimum
12 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
13 Members are entitled to recover the unpaid balance of their minimum wage compensation as
14 well as interest, costs, and attorneys' fees.

15 44. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
16 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
17 interest thereon.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)

21 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 46. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
24 unlawful to employ persons without compensating them at a rate of pay either one and one-half
25 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
26 worked by the person on a daily or weekly basis.

27 47. Specifically, the applicable IWC Wage Orders provide that Defendants are and
28 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one

1 and one-half times (1½) their regular rate of pay when working and for all hours worked in
2 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
3 eight (8) hours of work on the seventh day of work in a workweek.

4 48. The applicable IWC Wage Orders further provide that Defendants are and were
5 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
6 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in
7 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

8 49. California Labor Code § 510 codifies the right to overtime compensation at one
9 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
10 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
11 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
12 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
13 seventh day of work in a workweek.

14 50. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
15 of more than six days in a workweek is only permissible if the employer pays proper overtime
16 compensation as set forth herein.

17 51. Plaintiff and Class Members were employees entitled to the protections of
18 California Labor Code §§ 510 and 1194.

19 52. During the relevant time period, Defendants required Plaintiff and Class Members
20 to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh
21 consecutive day of work, entitling them to overtime wages.

22 53. During the relevant time period, Defendants failed to pay Plaintiff and Class
23 Members overtime wages for all overtime hours worked at the correct rate of pay. To the extent
24 these hours qualify for the payment of overtime wages, Plaintiff and Class Members were not
25 paid proper overtime wages. When Defendants paid overtime wages, they were sometimes
26 miscalculated because, among other reasons, Defendants did not include all non-discretionary
27 pay in the calculation.

1 54. In violation of California law, Defendants knowingly and willfully refused to
2 perform their obligations and compensate Plaintiff and Class Members for all wages earned and
3 all hours worked.

4 55. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
5 overtime compensation, as required by California law, violates the provisions of Labor Code §§
6 510 and 1198, and is therefore unlawful.

7 56. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
8 recover their unpaid overtime and double time compensation as well as interest, costs, and
9 attorneys' fees.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

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

13 57. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
14 though fully set forth herein.

15 58. Labor Code § 226.7 provides that no employer shall require an employee to work
16 during any meal period mandated by the IWC Wage Orders.

17 59. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
18 employ any person for a work period of more than five (5) hours without a meal period of not
19 less than 30 minutes, except that when a work period of not more than six (6) hours will
20 complete the day's work the meal period may be waived by mutual consent of the employer and
21 the employee."

22 60. Labor Code § 512(a) provides that an employer may not require, cause, or permit
23 an employee to work for a period of more than five (5) hours per day without providing the
24 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
25 the total work period per day of the employee is not more than six (6) hours, the meal period may
26 be waived by mutual consent of both the employer and the employee.

27 61. Labor Code § 512(a) also provides that an employer may not employ an employee
28 for a work period of more than ten (10) hours per day without providing the employee with a

1 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
2 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
3 employer and the employee only if the first meal period was not waived.

4 62. During the relevant time period, Plaintiff and Class Members did not receive
5 compliant meal periods for working more than five (5) and ten (10) hours per day because their
6 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
7 second meal period.

8 63. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
9 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
10 compensation for each work day that a compliant meal period is not provided.

11 64. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
12 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
13 and section 11 of the applicable IWC Wage Order.

14 65. As a result of Defendants' failure to pay Plaintiff and Class Members an
15 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
16 Class Members suffered and continue to suffer a loss of wages and compensation.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PERMIT REST BREAKS**

19 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

20 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
21 though fully set forth herein.

22 67. Labor Code § 226.7(a) provides that no employer shall require an employee to
23 work during any rest period mandated by the IWC Wage Orders.

24 68. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
25 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
26 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the
27 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
28 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.

1 69. During the relevant time period, Plaintiff and Class Members did not receive a ten
2 (10) minute rest period for every four (4) hours or major fraction thereof worked, including
3 working in excess of ten (10) hours in a day, because they were required to work through their
4 rest periods and/or were not authorized to take their rest periods.

5 70. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
6 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
7 compensation for each work day that a compliant rest period is not provided.

8 71. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
9 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
10 226.7(b) and section 12 of the applicable IWC Wage Order.

11 72. As a result of Defendants' failure to pay Plaintiff and Class Members an
12 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
13 Members suffered and continue to suffer a loss of wages and compensation.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PAY ALL WAGES TO COMISSION OR PIECE-RATE WORKERS FOR** 16 **REST BREAKS**

17 (Violation of Labor Code § 226.2; Violation of IWC Wage Order)

18 73. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
19 though fully set forth herein.

20 74. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be
21 compensated for rest and recovery periods and other nonproductive time separate from any
22 piece-rate compensation.

23 75. Labor Code § 226.2(a) provides that employees compensated on a piece-rate
24 basis shall be compensated for rest and recovery periods, and other nonproductive time separate
25 from any piece-rate compensation. Employees shall be compensated at a regular hourly rate that
26 is no less than the higher of:

27 (a) An average hourly rate determined by dividing the total compensation for the
28 workweek, exclusive of compensation for rest and recovery periods and any

1 premium compensation for overtime, by the total hours worked during the
2 workweek, exclusive of rest and recovery periods.

3 (b) The applicable minimum wage.

4 76. During the relevant time period, Plaintiff and Class Members who were paid on a
5 commission or piece-rate basis were not compensated for rest and recovery periods and other
6 nonproductive time separate from any commission or piece-rate compensation.

7 77. At all relevant times, Defendants knowingly and intentionally failed to comply
8 with Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on a
9 commission or piece-rate basis.

10 78. As a result of Defendants' failure to pay Plaintiff and Class Members
11 compensated rest and recovery periods, Plaintiff and Class Members suffered and continue to
12 suffer a loss of wages and compensation.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

15 (Violation of Labor Code §§ 2800, 2802)

16 79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein.

18 80. Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his
19 employee for losses caused by the employer's want of ordinary care."

20 81. Labor Code § 2802(a) states that "[a]n employer shall indemnify his or her
21 employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
23 the employer"

24 82. Labor Code § 2802(b) states that "[a]ll awards made by a court . . . for
25 reimbursement of necessary expenditures under this section shall carry interest at the same rate
26 as judgments in civil actions. Interest shall accrue from the date on which the employee incurred
27 the necessary expenditure or loss."
28

1 83. Labor Code § 2802(c) states that “[f]or purposes of this section, the term
2 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited
3 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

4 84. During the relevant time period, Plaintiff and Class Members incurred necessary
5 business-related costs that were not fully reimbursed by Defendants.

6 85. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or
7 indemnify Plaintiff and Class Members for their expenses due to Defendants’ knowing and
8 intentional failure to reimburse necessary business expenditures in connection with Plaintiff’s
9 and Class Members’ work and job duties.

10 86. As a direct result, Plaintiff and Class Members have suffered and continue to
11 suffer losses, and therefore seek complete reimbursement and indemnification of necessary
12 business expenditures or losses, interest thereon at the required rate, and all reasonable costs in
13 enforcing the rights under Labor Code § 2802, including, but not limited to attorneys’ fees.

14 **SEVENTH CAUSE OF ACTION**

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

16 (Violation of Labor Code § 226)

17 87. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 88. Labor Code § 226(a) requires Defendants to provide each employee with an
20 accurate wage statement in writing showing nine pieces of information, including, the following:
21 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
22 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
23 deductions, provided that all deductions made on written orders of the employee may be
24 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
25 which the employee is paid, (7) the name of the employee and the last four digits of his or her
26 social security number or an employee identification number other than a social security number,
27 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
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1 rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee.

3 89. During the relevant time period, Defendants have knowingly and intentionally
4 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
5 and Class Members. The deficiencies include, among other things, the failure to correctly state
6 the gross and net wages earned, piece rate pay and number of pieces, total hours worked, all
7 applicable hourly rates in effect, and the number of hours worked at each hourly rate by Plaintiff
8 and Class Members.

9 90. As a result of Defendants' knowing and intentional failure to comply with Labor
10 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
11 protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an injury
12 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §
13 226(a). Plaintiff and Class Members were denied both their legal right to receive, and their
14 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
15 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
16 Defendants prevented Plaintiff and Class Members from determining if all hours worked were
17 paid at the appropriate rate and the extent of the underpayment. Plaintiff had to file this lawsuit
18 in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses
19 and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had
20 Defendants provided the accurate hours worked, wages earned, and rates of pay. This has also
21 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

22 91. Plaintiff and Class Members are entitled to recover from Defendants the greater of
23 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
24 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
25 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
26 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

27 92. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
28 Class Members from knowing, understanding, and disputing the wages paid to them and resulted

1 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
2 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members
3 have suffered an injury, in the exact amount of damages and/or penalties to be shown according
4 to proof at trial.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

7 (Violation of Labor Code §§ 201, 202, and 203)

8 93. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
9 though fully set forth herein.

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

16 95. During the relevant time period, Defendants willfully failed to pay the Waiting
17 Time Subclass all their earned wages upon termination, including, but not limited to, proper
18 minimum wage and overtime compensation, meal period premiums, and rest period premiums
19 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
20 employ.

21 96. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the
22 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in
23 violation of Labor Code §§ 201 and 202.

24 97. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
25 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
26 the wages of the employee shall continue as a penalty from the due date at the same rate until
27 paid or until an action is commenced; but the wages shall not continue for more than thirty (30)
28 days.

98. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

99. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

100. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

101. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer injuries-in-fact.

102. Defendants' policies and practices violated state law in at least the following respects:

- (a) Failing to pay all wages earned (including minimum wage and overtime wages) to Plaintiff and Class Members at the proper rate in violation of Labor Code §§ 226.2, 510, 1182.12, 1194, 1194.2, 1197, and 1198.
- (b) Failing to provide compliant meal periods without paying Plaintiff and Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512.
- (c) Failing to authorize or permit compliant rest breaks without paying Plaintiff and Class Members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7.

- 1 (d) Failing to pay wages to commission or piece-rate workers for time spent
2 on non-productive tasks and in rest breaks and/or recovery periods in
3 violation of Labor Code § 226.2.
- 4 (e) Failing to reimburse Plaintiff and Class Members for necessary business-
5 related expenses in violation of Labor Code §§ 2800 and 2802.
- 6 (f) Failing to provide Plaintiff and Class Members with accurate itemized
7 wage statements in violation of Labor Code § 226.
- 8 (g) Failing to timely pay all earned wages to the members of the Waiting
9 Time Subclass upon separation of employment in violation of Labor Code
10 §§ 201, 202, and 203.

11 103. As alleged herein, Defendants systematically engaged in unlawful conduct in
12 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
13 (minimum and overtime wages), failing to provide meal periods and rest breaks or
14 compensation in lieu thereof, failing to reimburse necessary business-related costs and
15 expenses, failing to furnish accurate wage statements, and failing to pay all wages due and
16 owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in
17 order to decrease their costs of doing business and increase their profits.

18 104. At all relevant times herein, Defendants held themselves out to Plaintiff and Class
19 Members as being knowledgeable concerning the labor and employment laws of California.

20 105. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
21 Class Members wages and monies, thereby creating for Defendants an artificially lower cost of
22 doing business in order to undercut their competitors and establish and/or gain a greater
23 foothold in the marketplace.

24 106. By violating the foregoing statutes and regulations as herein alleged, Defendants'
25 acts constitute unfair and unlawful business practices under California Business and Professions
26 Code §§ 17200, *et seq.*

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107. As a result of the unfair and unlawful business practices of Defendants as alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution in an amount to be shown according to proof at trial.

108. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

TENTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")

109. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

110. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

111. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

112. Defendants' conduct violates numerous Wage Order and Labor Code sections, including, but not limited to, the following:

- a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194, 1197, and 1198 for failure to timely pay all earned wages (including

1 minimum wage and overtime wages) owed to Plaintiff and other
2 aggrieved employees during employment and upon separation of
3 employment as herein alleged;

4 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
5 periods to Plaintiff and other aggrieved employees and failure to pay
6 premium wages for missed meal periods as herein alleged;

7 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
8 Plaintiff and other aggrieved employees and failure to pay premium
9 wages for missed rest periods as herein alleged;

10 d. violation of Labor Code § 226.2 for failure to pay wages to commission
11 or piece-rate workers for time spent on non-productive tasks and in rest
12 breaks and/or recovery periods as herein alleged;

13 e. violation of Labor Code § 226 for failure to provide accurate itemized
14 wage statements to Plaintiff and other aggrieved employees as herein
15 alleged;

16 f. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
17 accurate and complete records showing, among other things, the hours
18 worked daily by and the wages paid to aggrieved employees; and

19 g. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
20 Plaintiff and other aggrieved employees for necessary business expenses
21 as herein alleged.

22 113. Plaintiff is an “aggrieved employee” because he was employed by the alleged
23 violator and had one or more of the violations committed against him, and therefore is properly
24 suited to represent the interests of all other aggrieved employees.

25 114. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
26 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and
27 all other aggrieved employees under PAGA.
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115. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

116. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

On Plaintiff's own behalf and on behalf of all others similarly situated, Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;

2. For appointment of Abel Lemuz Sanchez as the class representative;

3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;

5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;

6. For economic and/or special damages in an amount according to proof at trial;

7. For liquidated damages pursuant to Labor Code § 1194.2;

8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

12. For pre-judgment interest;

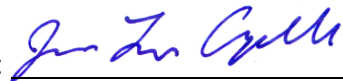
13. For civil penalties;

1 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
2 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
3 226(e), 1194, and 2698 *et seq.*; and

4 15. For such other relief as the Court deems just and proper.
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6 Dated: July 1, 2022

AEGIS LAW FIRM, PC

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8 By: 
9 Jessica L. Campbell
10 Attorneys for Plaintiff Abel Lemuz Sanchez
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CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On July 1, 2022, I served the foregoing document entitled:

• FREE AMENDED CLASS ACTION COMPLAINT

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

Ryan H. Crosner OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. 400 South Hope Street, Suite 1200 Los Angeles, CA 90071 Telephone: 213-457-5869 Fax: 213-239-9045 ryan.crosner@ogletree.com Elizabeth.Mendoza@ogletreedeakins.com blair.troy@ogletreedeakins.com lisa.hamusek@ogletreedeakins.com	Blair T. Troy OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. Park Tower, Fifteenth Floor 695 Town Center Drive Costa Mesa, CA 92626 Telephone: 714-800-7900 Facsimile: 714-754-1298 blair.troy@ogletree.com <i>Attorneys for Defendant:</i> EVANS FOOD GROUP LTD.
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☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via Case Anywhere on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on July 1, 2022, at Irvine, California.

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7 Delaney Graves
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