

HAIG B. KAZANDJIAN LAWYERS, APC  
801 N. Brand Blvd., Suite 970  
Glendale, CA 91203  
Tel: (818)696-2306 Fax: (818)696-2307

Haig B. Kazandjian, Esq. Bar No. 278622  
haig@hbklawyers.com  
Cathy Gonzalez, Esq. Bar No. 310625  
cathy@hbklawyers.com  
**HAIG B. KAZANDJIAN LAWYERS, APC**  
801 North Brand Boulevard, Suite 970  
Glendale, California 91203  
Telephone: 1-818-696-2306  
Facsimile: 1-818-696-2307

*Attorneys for Plaintiff* GILBERTO GONZALEZ,  
individually, and on behalf of all persons similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES- NORTHEAST DISTRICT**

GILBERTO GONZALEZ, , individually, and  
on behalf of all persons similarly situated ;

Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION,  
a Washington Corporation, and DOES 1  
through 50, inclusive,

Defendants.

**Case No. 22AHCV00255**

*[Assigned for all purposes to Honorable  
Margaret L. Oldendorf, Dept. P]*

**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES AND  
PENALTIES**

- 1. FAILURE TO PAY MEAL PERIOD PREMIUMS AT REGULAR RATE IN VIOLATION OF LABOR CODE §§ 226.7 AND 512;**
- 2. FAILURE TO PAY REST PERIOD PREMIUMS AT REGULAR RATE IN VIOLATION OF LABOR CODE §§ 226.7**
- 3. FAILURE TO PAY SICK TIME AT THE REGULAR RATE IN VIOLATION OF LABOR CODE §246;**
- 4. FAILURE TO KEEP ACCURATE AND PROVIDE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODES § 226 AND THE I.W.C. WAGE ORDERS;**
- 5. FAILURE TO PAY WAITING TIME PENALTIES IN VIOLATION OF LABOR CODE § 201, 202, AND 203;**
- 6. FAILURE TO TIMELY PAY EARNED WAGES IN VIOLATION OF LABOR CODES § 204 AND 210**

**FILED**  
Superior Court of California  
County of Los Angeles

**02/08/2024**

David W. Slayton, Executive Officer / Clerk of Court

By: C. Ruiz Deputy

7. **UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.*;**
8. **PENALTIES UNDER CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT (“PAGA”) FOR VIOLATION OF LABOR CODE §§ 201-204, 210, 226, 226.7, 246, and 512**

Plaintiff GILBERTO GONZALEZ (“Representative Plaintiff” or “Plaintiff”), individually, and on behalf of other members of the general public similarly situated alleges as follows:

### **INTRODUCTION**

1. This is Class Action, pursuant to California Code of Civil Procedure §382 on behalf of Plaintiff and other non-exempt current and former employees employed by Costco Wholesale Corporation, and DOES 1 through 50, inclusive, (collectively “Defendants”). Defendants were joint employers of Plaintiffs in that they were operating as joint enterprises and both suffered and permitted Plaintiff to work for each of them; controlled Plaintiff’s hours and working conditions; controlled Plaintiff’s wages; both made the decision to hire Plaintiff and had control of termination of Plaintiff’s employment and therefore jointly employed Plaintiff. Defendants are collectively hereinafter referred to as “Defendants”.

2. This is a civil action seeking recovery for Defendants’ violations of California Labor Code (“Labor Code”) California Business and Professions Code (“B& PC”) §17000 et seq. and §17200, et seq., the applicable Wage Order(s) issued by the California Industrial Welfare Commission (hereinafter, the “IWC Wage Order(s)”) and related common law principles.

3. REPRESENTATIVE PLAINTIFF’s action seeks monetary damages, including, but not limited to, unpaid wages, penalties, attorneys’ fees and costs, and full restitution from Defendants as a result of Defendants’ unlawful, fraudulent and/or unfair business practices.

The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four (4) years preceding the filing of Plaintiff's complaint, up to and through the time of trial for this matter.

4. REPRESENTATIVE PLAINTIFF is unaware of the true names and capacities, whether corporate, individual, or otherwise, of DEFENDANTS named as DOES 1 through 50, inclusive. Pursuant to California Code of Civil Procedure section 474, REPRESENTATIVE PLAINTIFF will seek leave of court to amend this complaint to state said DEFENDANTS' true names and capacities when the same have been ascertained. REPRESENTATIVE PLAINTIFF is informed and believes, and based thereon alleges, that said fictitiously-named DEFENDANTS are responsible in some manner for the injuries and damages to REPRESENTATIVE PLAINTIFF and the other putative class members as further alleged herein.

#### **RELEVANT EMPLOYEES**

5. The relevant employees are Defendants' current and former employees, who were or are employed in California who were or are paid on an hourly non-exempt basis for the time period of April 12, 2021 through the date of judgment.

6. The obligations and responsibilities of Defendants' current and former non-exempt, hourly paid employees employed in California by Defendants are virtually identical from location to location and employee to employee.

7. Any differences in job activities between the different individuals in these positions were and are legally insignificant to the issues presented by this action.

#### **SUMMARY OF CLAIMS**

8. With regard to Defendants' California based non-exempt, hourly paid current and former employees, Defendants have established a time keeping policy which does not properly compensate said employees at their regular rate of pay when paying meal premiums, rest premiums and/or sick pay. As a result, Defendants have failed to timely pay for all wages due. Further, Defendants have failed to timely furnish accurate itemized wage statements; failed to timely pay earned wages; and conducted unfair business practices.

**PARTIES**

9. REPRESENTATIVE PLAINTIFF is an individual who resides in California and has been employed by COSTCO WHOLESALE CORPORATION from on or about February 6, 2014.

10. REPRESENTATIVE PLAINTIFF is informed and believes, and based on such information and belief, alleges that at all times mentioned herein, COSTCO WHOLESALE CORPORATION is a Washington Corporation, licensed to do business and actually doing business in the State of California.

11. REPRESENTATIVE PLAINTIFF is informed and believes, and based on such information and belief, alleges that DEFENDANT COSTCO WHOLESALE CORPORATION is a chain of membership-only big-box retail stores. Thus, DEFENDANTS are subject to the applicable California laws as alleged throughout this Complaint.

12. At all relevant times, Defendants were employers whose employees are engaged throughout the State of California and were the employer of Plaintiff within the meaning of all applicable California state laws and statutes.

13. Representative Plaintiff is unaware of the true names and capacities, whether corporate, individual, or otherwise, of defendants named as DOES 1 through 50 inclusive. Pursuant to California Code of Civil Procedure section 474, Representative Plaintiff will seek leave of court to amend this complaint to state said Defendants' true names and capacities when the same have been ascertained. Representative Plaintiff is informed and believes, and based on such information and belief, alleges that said fictitiously-named defendants are responsible in some manner for the injuries and damages to Representative Plaintiff as further alleged herein. Defendants were joint employers of Plaintiff in that they were operating as a joint enterprises and both suffered and permitted Plaintiff to work for each of them; controlled Plaintiff's hours and working conditions; Controlled Plaintiff's wages; Defendants made the decision to hire Plaintiff and had control of Plaintiff's employment and therefore jointly employed Plaintiff.

1           14. Representative Plaintiff is informed, believes, and thereupon alleges, that at all  
2 times herein mentioned, Defendants ratified each and every act or omission complained of  
3 herein.

4           15. Defendants, and each of them, are now and/or at all times mentioned in this  
5 Complaint were in some manner legally responsible for the events, happenings, and  
6 circumstances alleged in this Complaint.

7           16. Defendants, and each of them, are now and/or at all times mentioned in this  
8 Complaint were, the agents, servants, and/or employees of some or all other Defendants, and  
9 vice versa, and in doing the things alleged in this Complaint, and that said acts and failures to  
10 act were within the course and scope of said agency, employment and/or direction and control  
11 of Defendants, and each of them.

12           17. Defendants are now and/or at all times mentioned in this Complaint were acting  
13 within the course and scope of that agency, servitude and/or employment.

14           18. Defendants, and each of them, are now and/or at all times mentioned in this  
15 Complaint were members of and/or engaged in a joint venture, partnership and common  
16 enterprise, and were acting within the course and scope of, and in pursuance of said joint venture,  
17 partnership, and common enterprise.

18           19. Defendants, and each of them, at all times mentioned in this Complaint concurred  
19 and contributed to the various acts and omissions of each and every one of the other Defendants  
20 in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.  
21 Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned,  
22 and/or otherwise ratified each and every one of the acts and/or omissions alleged in this  
23 Complaint.

24           20. Defendants, and each of them, at all times mentioned in this Complaint aided and  
25 abetted the acts and omissions of each and every one of the other Defendants, thereby  
26 proximately causing the damages alleged in this Complaint.

27           21. Plaintiff seeks penalties unpaid wages, penalties and other compensation from  
28 Defendants for the relevant time period because Defendants have:

- a. Failed to Pay Meal Period Premiums at the Regular Rate;
- b. Failure to Pay Rest Break Period Premiums at the Regular Rate;
- c. Failure to Pay Sick Time At the Regular Rate;
- d. Failure to Provide Accurate Wage Statement(s);
- e. Failure to Timely Pay Earned Wages;
- f. Failure to Pay Waiting Time Penalties; and
- g. Conducted unfair business practices.

### **VENUE AND JURISDICTION**

22. Venue is proper under California Code of Civil Procedure section 395 and under California Government Code section 12965(b), in that Plaintiff's injuries were incurred within the County of Los Angeles, the actions giving rise to Representative Plaintiff's complaint arose within the County of Los Angeles, and Defendants are located in the County of Los Angeles and/or do business in the County of Los Angeles.

23. Further, this class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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

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

26. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, County of Los Angeles. The majority of the acts and omissions alleged herein relating to the other class members took place in the State of California, including the County of Los Angeles, which has the highest concentration of Defendants' offices, and therefore percipient witnesses, in the State of California.

27. The California Superior Court also has jurisdiction in this matter because the individual claims of the members of the Classes herein are under the seventy-five thousand (\$75,000) jurisdictional threshold for Federal Court and the aggregate claim is under the five million dollar (\$5,000,000) threshold of the Class Action Fairness Act of 2005 ("CAFA"). Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Order(s), CCP, and Business & Profession Code.

#### **GENERAL ALLEGATIONS:**

28. CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

29. Plaintiff brings this suit as a class action pursuant to CCP § 382, on behalf of individuals who are entitled to the monies unlawfully withheld by Defendants. This is a Class Action Complaint, on behalf of Plaintiffs and all other persons similarly situated who worked for Defendants in California from the earliest period in the applicable statute of limitations through judgment, as non-exempt, hourly employees for: (1) Failure To Pay Meal Period Premiums at the Regular Rate; (2) Failure to Pay Rest Period Premiums at Regular Rate; (3) Failure to Pay Sick Time at the Regular Rate; (4) Wage Statement Penalties; (5) Waiting Time Penalties; (6) Failure to Timely Pay Wages; (7) Unlawful Business Practices

30. For at least four (4) years prior to the filing of this complaint and through to the present, Representative Plaintiff and the putative class members were paid far less than they

would have been paid had they been paid at their regular rate when they were paid meal period premiums, rest period premiums and/or sick pay. Defendants failed to properly calculate the regular rate of pay for meal/rest premiums, and paid sick leave when paying putative class member “Extra Checks” and/or “Hero Pay”.

31. For at least four (4) years prior to the filing of this complaint and through to the present, Defendants have had a consistent policy of failing to provide to its non-exempt, hourly employees with itemized wage statements that included all of the required categories of information. This included both not including at all one or more of the required categories, or including such categories but providing information therein that was not accurate.

32. Representative Plaintiff, on behalf of himself and all class members, brings this action pursuant to California Labor Code sections 201-204, 210, 226, 226.7, 246 and 512 seeking unpaid compensation for legally inadequate meal and rest periods premiums, sick pay, and for penalties, injunctive and other equitable relief, interest, and reasonable attorneys’ fees and costs pursuant to Labor Code sections 218.5, 218.6 and 1194 and any and all other applicable law.

33. Representative Plaintiff, on behalf of himself and all class members, pursuant to Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to correctly pay meal and rest period premiums at the regular rate and for failure to correctly pay sick pay at the regular rate, and any and all other injuries suffered as a result of the Defendants’ failure to timely pay all wages due.

### **STATEMENT OF FACTS**

34. Defendants employed Plaintiff and other persons as hourly-paid, non-exempt employee within the State of California.

35. Defendants had the authority to hire and terminate Plaintiff and the putative class members, to set work rules and conditions governing Plaintiff’s and the other class members’ employment, and to supervise their daily employment activities.

36. Defendants directly hired and paid wages and benefits to Plaintiff and the putative

1 class members.

2 37. Defendants continue to employ hourly-paid, non-exempt employees at their  
3 locations within the State of California.

4 38. Defendants did not pay Representative Plaintiff, the putative class members, and  
5 other aggrieved employees all wages owed. The reasons that these employees were not paid for  
6 all required wages at the regular rate of pay (meal/rest premiums, or paid sick leave), such that  
7 employees were not paid at the correct rate of pay for all time that they were subject to  
8 Defendants' control or that they were suffered or permitted to work.

9 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
10 knew or should have known that Plaintiff and the other class members were entitled to receive  
11 all meal and rest period premiums and sick time at Plaintiff's and the other class members'  
12 regular rate of pay when a meal or rest period was missed, and they did not receive all meal and  
13 rest periods or payment of one additional hour of pay at Plaintiff and the other class members'  
14 regular rate of pay when a meal or rest period was missed.

15 40. Defendants did not provide accurate itemized wage statements to employees.  
16 Defendants routinely failed to provide Plaintiff, the putative class members, and other aggrieved  
17 employees with timely, accurate, and itemized wage statements in writing showing each  
18 employee's gross wages earned, all applicable and accurate hourly rates when paying meal  
19 and/or rest premiums or sick pay during each pay period when Defendant paid Class members  
20 Hero Pay and/or Extra Checks, in violation of California Labor Code § 226 and §§ 6 and 7 of  
21 the applicable IWC Wage Orders.

22 41. Plaintiff is informed and believes, and based thereon alleges, that at all material  
23 times set forth herein, Defendants were advised by skilled lawyers and other professionals,  
24 employees, and advisors knowledgeable about California and federal labor and wage law and  
25 employment and personnel practices, and about the requirements of California and federal law.

26 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
27 knew or should have known that Plaintiff and the putative class members were entitled to receive  
28 all wages owed to them at the correct hourly rate when meal and rest period premiums or sick

1 pay were paid along with Hero Pay and/or Extra Checks, and they did not, in fact, receive all  
2 such wages owed to them at the correct hourly rate during their employment, and/or at the time  
3 of their discharge or resignation.

4 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
5 knew or should have known that Defendants had to keep complete and accurate payroll records  
6 for Plaintiff and the putative class members in accordance with California law, but, in fact, did  
7 not keep complete and accurate payroll records.

8 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
9 knew or should have known that they had a duty to compensate Plaintiff and the putative class  
10 members pursuant to California law, and that Defendants had the financial ability to pay such  
11 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented  
12 to Plaintiff and the putative class members that they were properly denied wages, all in order to  
13 increase Defendants' profits.

14 45. The California Supreme Court opinion in *Ferra v. Loews Hollywood Hotel, LLC*  
15 holds that, similar to the requirement that employers pay overtime at the "regular rate of pay"  
16 (which includes commissions, bonuses or other nondiscretionary pay), employers are required  
17 to pay meal and rest break premiums at a regular rate that includes commissions, bonuses or  
18 other non-discretionary pay. Plaintiff alleges that Defendants failed to include non-discretionary  
19 bonuses in its calculations for meal and/or rest period penalties or sick pay.

20 46. The California Supreme Court in *Naranjo v. Spectrum Security Services, Inc.*  
21 (Cal., May 23, 2022, No. S258966) 2022 WL 1613499) held that missed-break premium pay is  
22 indeed wages subject to the Labor Code's timely payment and reporting requirements, and it  
23 can support section 203 waiting time penalties and section 226 wage statement penalties.

24 47. California Labor Code section 218 states that nothing in Article 1 of the Labor  
25 Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due  
26 to him [or her] under this article."

27 //

28 //

**CLASS ACTION ALLEGATIONS**

48. The putative classes Plaintiffs will seek to certify are currently composed of and defined as follows:

49. **Meal Period Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that were not provided a legally adequate meal or rest period premium in any pay period in which they earned Hero Pay and/or Extra Checks that should have been included when calculating their rate of pay for their meal or rest period premiums (hereinafter, the "Meal Period Class");

50. **Failure to Pay Sick Time At Regular Rate.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) who did not receive paid sick pay at the correct rate in pay periods when they also earned Hero Pay and/or Extra Checks, in violation of Labor Code §246;

51. **Timely Payment Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that did not receive all wages owed to them on time in compliance with Labor Code Section 204.

52. **Waiting Time Penalties Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that did not receive all wages owed to them at the time of termination or resignation (hereinafter, the "LC203 Class");

53. **Itemized Wage Statement Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that did not receive an itemized wage statement that listed the correct corresponding rates of pay (hereinafter, the Itemized Wage Statement Class");

54. Representative Plaintiff reserves the right under Rule 1855(b) of the California Rules of Court to amend or modify the class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

55. This action has been brought and may properly be maintained as a class action

under the provisions of Section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

**A. Numerosity**

56. The potential members of the Classes as defined are so numerous that joinder of all the members of the Classes is impracticable. While the precise number of class members for each Class has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed, at least 50 employees in the State of California, in non-exempt positions throughout California, who are or have been affected by Defendants' policy of: (1) failing to provide employees with legally adequate pay for meal and rest period premiums when paying additional compensation; (2) failure to provide and keep accurate wage statements; (3) failure to pay waiting time penalties; (4) failure to timely pay earned wages; and (4) failure to pay sick time at the correct rate when paying additional compensation.

57. Upon information and belief, Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all members of the Classes.

**B. Commonality**

58. There are questions of law and fact common to the Classes that predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

(a) Whether Defendants violated Labor Code Sections 512, 226.7, and the IWC Wage Orders by failing to properly pay meal and rest period premiums at each employee's regular rate of compensation for each workday that a meal or rest period was not provided;

(b) Whether Defendants violated Labor Code Sections 201-204 by failing to pay, at termination, proper compensation for meal premiums paid when a meal or rest period was not provided;

(c) Whether Defendants violated Labor Code section 226 for their failure to furnish employees with an accurate, legally adequate, itemized wage statements;

(d) Whether Defendants violated Labor Code sections 204 and 210 for failing to timely pay earned wages;

(e) Whether Defendants violated Labor Code section 246 for failing to pay sick time at the correct rate.

**C. Typicality**

59. The claims of the Plaintiff are typical of the claims of the Classes. Plaintiff and all members of the Classes sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged therein.

**D. Adequacy of Representation**

60. The Plaintiff is an adequate representative of the Classes Plaintiff seeks to represent; will fairly protect the interests of the members of the Classes; has no interests antagonistic to the members of the Classes; will fairly and adequately represent and protect the interests of the members of the Classes; and will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type. Counsel who represents the Representative Plaintiff are competent and experienced.

**E. Superiority of Class Action**

61. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable, and questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes. Each member of each Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/ or practice of failing to legally compensate class members as alleged above.

62. 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. Representative Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

**PAGA ALLEGATIONS**

63. At all relevant times set forth herein, PAGA was applicable to Plaintiff's employment by Defendant.

64. At all times set forth herein, PAGA provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the California Labor Code, which may be alternatively recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures set forth under California Labor Code section 2699.3.

65. Representative Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee, as defined by California Labor Code section 2699(c). Specifically, he is an employee of Defendants, and one or more of the alleged violations were committed against him during the statutory time period.

66. Pursuant to Labor Code sections 2699.3 and 2699.5, on February 25, 2022, Representative Plaintiff, served, via Certified Mail, the LWDA and his employers, a written notice of the specific provisions of the California Labor Code that Defendants violated, including facts and theories supporting the alleged violations. The LWDA neither provided notice to the employer and Representative Plaintiff of its intention to investigate Defendants' alleged violations, nor did the LWDA provide such a notice within the requisite sixty-five (65) calendar days of the postmark date of Representative Plaintiff's Notice. The administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties, in addition to other remedies, for violations of California Labor Code sections 201-204, 210, 226, 226.7, 246 and 512 have been satisfied. As such, Plaintiff may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

**FIRST CAUSE OF ACTION**

**(FAILURE TO PROVIDE MEAL AND REST PERIODS**

**IN VIOLATION OF LABOR CODE §§ 226.7, 512, AND IWC WAGE ORDERS)**

**(By Plaintiff Against Defendants)**

67. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs.

68. By failing to provide the correct rate of compensation for unprovided and/or legally inadequate meal and rest periods, as alleged above, Defendants violated the provisions of Labor Code sections 512 and 226.7.

69. During the relevant time period, Defendants failed to pay Plaintiff and the putative class members the full meal and rest period premiums due pursuant to California Labor Code section 226.7 when Plaintiff and/or class members also earned additional compensation, ie. Extra Checks and/or Hero Pay.

70. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

71. As a result of the unlawful acts of Defendants, Plaintiff and the putative class members have been deprived of premium wages in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

## **SECOND CAUSE OF ACTION**

### **(FAILURE TO PAY SICK TIME AT CORRECT RATE IN VIOLATION OF LABOR CODE §246)**

#### **(By Plaintiff Against Defendants)**

72. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

73. California Labor Code section 246 provides that an employee who works for the same employer for more than 30 days is entitled to paid sick days.

74. Sick pay must be compensated at the employee's regular rate of pay for the workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days.

75. During the relevant time period, Defendants failed to pay Plaintiff and the

putative class members sick pay at the correct rate due pursuant to California Labor Code section 246 when Plaintiff and/or class members also earned additional compensation, ie. Extra Checks and/or Hero Pay

76. As such, Defendants unlawfully retained and continue to retain paid sick leave that should have been paid to Plaintiff and other putative class members but for Defendants' failure to properly institute and/or adhere to a legally compliant paid sick leave program.

77. Plaintiff and the putative class members are entitled to recover from Defendants unpaid sick pay in amounts to be determined at trial, with interest attorney fees and costs.

**THIRD CAUSE OF ACTION**

**(FAILURE TO KEEP ACCURATE AND PROVIDE ITEMIZED WAGE  
STATEMENTS IN VIOLATION OF LABOR CODE § 226, AND THE IWC WAGE  
ORDERS)**

**(By Plaintiff Against Defendants)**

78. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

79. Section 226(a) of the California Labor Code requires Defendants to provide itemized wage statements at the time of payment of wages which include, but are not limited to, the following: gross wages earned; the correct total hours worked by the employee; the correct net wages earned; the inclusive dates of the period for which the employee is paid; the name and address of the correct 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.

80. Plaintiff contends that he and the putative class members have been injured by Defendants' failure to provide all of the requisite information on its itemized wage statements in that such failure, *inter alia*: (1) masks possible and actual underpayments to Defendants' employees; (2) make it difficult for Defendants' employees to verify that they have in fact been paid the proper amounts owing for all hours worked; and (3) makes it difficult for

Representative Plaintiff to identify his true employer for purposes of this litigation. Said conduct was done knowingly and intentionally, since Defendants are aware of California law, and with the design to harm Representative Plaintiffs and the putative class members.

81. At all times relevant during the liability period, Plaintiff and the putative class members were employees of Defendants covered by Labor Code section 226 and the Wage Orders.

82. Defendants did not provide accurate itemized wage statements to employees. Defendants routinely failed to provide Plaintiff, the putative class members, and other aggrieved employees with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, all applicable and accurate hourly rates when paying meal and/or rest premiums or sick pay during each pay period when Defendant paid Class members Hero Pay and/or Extra Checks, in violation of California Labor Code § 226 and §§ 6 and 7 of the applicable IWC Wage Orders.

83. Defendants failed to pay Plaintiff and Hourly Employee Class Members an additional hour of pay at their regular rate of compensation for each date on which it failed to provide legally compliant meal and/or rest period premiums and/or sick pay when additional compensation was paid in the same pay period. As set forth in *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 23, 2022, No. S258966) 2022 WL 1613499) missed-break premium pay are wages subject to the Labor Code's timely payment and reporting requirements, thus Defendants failure to pay Plaintiff and Hourly Employee Class Members constitutes a violation of California Labor Code Section 226.

84. Representative Plaintiff and the putative class members are entitled to recover the full amount of their unpaid wages, interest thereon, penalties, reasonable attorneys' fees, and costs of suit.

#### **FOURTH CAUSE OF ACTION**

#### **(FAILURE TO PAY WAITING TIME PENALTIES IN VIOLATION OF LABOR CODE § 201, 202, AND 203) (By Plaintiff Against Defendants)**

85. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

86. California Labor Code section 201 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. California Labor Code section 202 requires an employer of an employee who quits to pay all compensation due and owing to that employee not later than 72 hours thereafter, unless the employee gave 72 hours previous notice of the intention to quit, in which case the employee is entitled to wages at the time of quitting.

87. California Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon separation from employment, as required by either Sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to 30 work days.

88. Defendants willfully failed and refused to timely pay all wages at the correct hourly rate when paying meal or rest break premiums and sick pay when also paying additional compensation, ie. Hero Pay and/or Extra checks to Representative Plaintiff and the putative class members whose employment terminated. As a result, Defendants are liable to Representative Plaintiff and the putative class members whose employment terminated for waiting time penalties, together with interest thereon and attorneys' fees and costs, under Labor Code section 203.

89. Defendants failed to pay Plaintiff and Hourly Employee Class Members an additional hour of pay at their regular rate of compensation for each date on which it failed to provide legally compliant meal/rest periods and/or sick pay. As set forth in *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 23, 2022, No. S258966) 2022 WL 1613499) missed-break premium pay are wages subject to the Labor Code's timely payment and reporting requirements, thus Defendants failure to pay Plaintiff and Hourly Employee Class Members constitutes a violation of California Labor Code Section 201-203.

90. As a result of Defendants' unlawful conduct, Representative Plaintiff and

putative class members have suffered damages in an amount, subject to proof at trial, to the extent they were not paid all wages due each pay period. The precise amount of unpaid wages is not presently known to Representative Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

91. Representative Plaintiff and the putative class members are entitled to recover the full amount of their unpaid wages, interest thereon, penalties, reasonable attorneys' fees and costs of suit.

**FIFTH CAUSE OF ACTION**  
**(FAILURE TO TIMELY PAY EARNED WAGES**  
**IN VIOLATION OF LABOR CODES § 204 AND 210)**  
**(By Plaintiff Against Defendants)**

92. Plaintiff re-alleges each paragraph of this Complaint as though fully set forth herein.

93. California Labor Code § 204 requires biweekly payment of wages for all employees except salaried executive, administrative and professional employees covered by the Fair Labor Standards Act, whom it requires employers to pay at least once per month.

94. Defendants failed to pay Plaintiff and Hourly Employee Class Members an additional hour of pay at their regular rate of compensation for each date on which it failed to pay legally compliant rest period and/or meal period premiums and/or sick pay. As set forth in *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 23, 2022, No. S258966) 2022 WL 1613499) missed-break premium pay are wages subject to the Labor Code's timely payment and reporting requirements, thus Defendants failure to pay Plaintiff and Hourly Employee Class Members constitutes a violation of California Labor Code Section 204.

95. California Labor Code § 210 makes any person subject to civil penalties by failing to pay employees as required by California Labor Code § 204.

96. Plaintiff and Hourly Employee Class Members are entitled to recover \$100 for Defendants' initial violation, and \$200 for each subsequent violation, plus twenty percent of the amount of wages unlawfully withheld.

**SIXTH CAUSE OF ACTION**  
**(UNLAWFUL BUSINESS PRACTICES**  
**IN VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.*)**  
**(By Plaintiff Against Defendants)**

97. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

98. Defendants' failure to correctly pay wages as alleged herein, failure to keep accurate records, and failure to provide proper compensation when paying meal/rest period premiums and/or sick pay at the regular rate, constitute unlawful activity prohibited by Business and Professions Code section 17200, *et seq.*, including, but not limited to, Sections 17200, 17202, and 17203.

99. The actions of Defendants in failing to pay Plaintiff and the putative class members in a lawful manner as alleged herein constitute false, unfair, fraudulent and/or deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

100. As a result of its unlawful acts, Defendants have reaped and continue to reap unfair benefits at the expense of Plaintiff and the putative class members. Defendants should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Plaintiff and the putative class members the wrongfully withheld wages pursuant to Business and Professions Code section 17203. Plaintiff is informed and believes, and based thereon alleges, that Defendants are unjustly enriched through their failure to pay wages and compensation at non-complaint rate to Plaintiff and the putative class members.

101. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and the putative class members are prejudiced by Defendants' unfair practices.

102. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff and the putative class members are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages, which have been unlawfully

withheld from Plaintiff and the putative class members as a result of the business acts and practices described herein, and enjoin Defendants to cease and desist from engaging in the practices described herein.

103. The illegal conduct alleged herein is believed to be continuing, and there is no indication that Defendants will not continue such activity into the future. Plaintiff, on behalf of the putative class, alleges that if Defendants are not enjoined from the conduct set forth in this complaint, they will continue to fail to pay the correct wages, and will continue to fail to provide appropriate compensation as described herein.

### **SEVENTH CAUSE OF ACTION**

#### **(Violation of California Labor Code §§ 2698, et seq.)**

#### **(Against All Defendants)**

104. Representative Plaintiff hereby re-allege and incorporate all preceding paragraphs as though fully set forth herein.

105. PAGA establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

106. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

107. Representative Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” within the meaning of California Labor Code section 2699(c) as they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

#### **Failure to Provide Meal and Rest Periods**

108. DEFENDANTS failure to provide legally required meal and rest periods to

1 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES constitutes unlawful  
2 and/or unfair activity prohibited by California Labor Code sections 226.7, 512(a), and the  
3 applicable Wage Orders.

4 **Failure to Provide Accurate Itemized Wage Statements**

5 109. DEFENDANTS failure to provide accurate itemized wage statements to Plaintiff  
6 and other AGGRIEVED EMPLOYEES constitutes unlawful and/or unfair activity prohibited  
7 by California Labor Code section 226.

8 **Failure to Timely Pay Wages During Employment**

9 110. DEFENDANTS failure to timely pay wages to REPRESENTATIVE  
10 PLAINTIFF and other AGGRIEVED EMPLOYEES during their employment constitutes  
11 unlawful and/or unfair activity prohibited by California Labor Code section 204.

12 **Failure to Timely Pay Wages Upon Termination or Resignation**

13 111. DEFENDANTS failure to timely pay wages to REPRESENTATIVE  
14 PLAINTIFF and other AGGRIEVED EMPLOYEES upon termination constitutes unlawful  
15 and/or unfair activity prohibited by California Labor Code sections 201, 202, and 203.

16 **Failure to Pay Sick Pay at Regular Rate**

17 112. Defendants failure to pay sick pay at the regular rate of pay for the workweeks in  
18 which the leave was taken constitutes unlawful and/or unfair activity prohibited by California  
19 Labor Code section 246.

20 **Civil Penalties**

21 113. Pursuant to California Labor Code section 2699, REPRESENTATIVE  
22 PLAINTIFF, individually, and on behalf of all AGGRIEVED EMPLOYEES, requests and is  
23 entitled to recover penalties from DEFENDANTS and each of them, for violations of the  
24 Labor Code as more fully described herein according to proof, interest, attorneys' fees and  
25 costs pursuant to California Labor Code section 218.5, including but not limited to:

26 a. Penalties under California Labor Code section 2699 in the amount of a hundred  
27 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two  
28

hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalties provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes, including, but not limited to, penalties pursuant to California Labor Code 558(a).

114. Pursuant to California Labor Code section 2699(i), civil penalties recovered shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the AGGRIEVED EMPLOYEES.

115. Further, **REPRESENTATIVE PLAINTIFF** is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

116. THEREFORE, REPRESENTATIVE PLAINTIFF and the individuals he seeks to represent request relief as described below:

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. Certification of the case as a class action on behalf of the proposed Classes, designation of Plaintiff representatives of the Hourly Employee Class and designation of his counsel of record as Class Counsel;

2. For Wages, damages, and equitable relief for all harm Plaintiff and the Hourly Employee Class have sustained as a result of Defendants' conduct, according to proof;

3. For Restitution and disgorgement of unjust enrichment to Plaintiff and members of the Hourly Employee Class;

4. For a preliminary and permanent injunction against Defendants and their directors, officers, owners, agents, successors, employees, and representatives—and any and all persons acting in concert with them—from engaging in the unlawful practices, policies, customs, and usages set forth herein;

5. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.7, 246, and 512;

6. For a declaratory judgment that the practices complained of in this Complaint are unlawful and violate applicable law;

7. For attorney fees and costs incurred in the investigation, filing, and prosecution of this action;

8. Pre-judgment and post-judgment interest, as provided by law; and

9. For such other and further legal and equitable relief as this Court deems necessary, just, and proper.

Dated: January 31, 2024

HAIG B. KAZANDJIAN LAWYERS, APC

By:

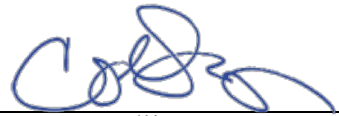
  
Haig B. Kazandjian, Esq.  
Cathy Gonzalez, Esq.  
*Attorneys for Plaintiff GILBERTO GONZALEZ*

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

Dated: January 31, 2024

**HAIG B. KAZANDJIAN LAWYERS, APC**

By: 

Haig B. Kazandjian, Esq.

Cathy Gonzalez, Esq.

*Attorneys for Plaintiff GILBERTO  
GONZALEZ*

HAIG B. KAZANDJIAN LAWYERS, APC  
801 N. Brand Blvd., Suite 970  
Glendale, CA 91203  
Tel: (818)696-2306 Fax: (818)696-2307

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 801 North Brand Boulevard, Suite 970, Glendale, California 91203.

On February 8, 2024, I served the foregoing document(s) described as: SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND PENALTIES by method indicated below, on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

**SEE ATTACHED SERVICE LIST**

☐ **BY PERSONAL DELIVERY:** I caused a copy of the document to be delivered personally to the individual(s) named in the attached service list.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the above-listed document(s) in an envelope or package provided by an overnight delivery carrier and addressed it to the referenced in attached service list. I placed the envelope or package for collection and overnight delivery at an area regularly utilized by said delivery carrier.

☐ **BY U.S. MAIL:** I enclosed said document(s) in a sealed envelope or package to each addressee. I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service, with postage fully prepaid, on the same day in the ordinary course of business.

☒ **BY ELECTRONIC MAIL:** I transmitted the foregoing document(s) by electronic mail from osbaldo@hbklawyers.com to the electronic mail addresses indicated on the attached mailing list. The transmission was reported as complete and without error.

☐ **BY FAX TRANSMISSION:** I transmitted the foregoing document(s) by facsimile transmission from 818-696-2307 to the facsimile numbers indicated on the attached mailing list. The transmission was reported as complete and without error on the transmission report, which was properly issued by the transmitting facsimile machine and, pursuant to Rule 2.306(h)(4), a copy of which is attached to the original of this proof of service.

☒ (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 8, 2024, at Glendale, California.

*/s/ Osbaldo Bautista*

\_\_\_\_\_  
Osbaldo Bautista

**SERVICE LIST**

SEYFARTH SHAW LLP  
David D. Jacobson  
[djacobson@seyfarth.com](mailto:djacobson@seyfarth.com)  
Lauren S. Schwartz  
[lschwartz@seyfarth.com](mailto:lschwartz@seyfarth.com)  
Reiko Furuta  
[rfuruta@seyfarth.com](mailto:rfuruta@seyfarth.com)  
2029 Century Park East, Suite 3500  
Los Angeles, California 90067-3021  
Telephone: (310) 277-7200  
Facsimile: (310) 201-5219  
Attorneys for Defendants  
COSTCO WHOLESALE CORPORATION and  
CATON FRATES

HAIG B. KAZANDJIAN LAWYERS, APC  
801 N. Brand Blvd., Suite 970  
Glendale, CA 91203  
Tel: (818)696-2306 Fax: (818)696-2307

**PROOF OF SERVICE**