

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
(619) 693-7727 / (619) 350-6855 facsimile
nick@ferrarovega.com / lauren@ferrarovega.com

Rick A. Waltman (State Bar No. 306463)
RICK WALTMAN LAW, APC
501 W. Broadway, Ste. 800
San Diego, California 92101
(619) 320-5666
rick@rickwaltmanlaw.com

Attorneys for Plaintiff Brook Freeze

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 08 2022


Charisse Navarro

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

BROOK FREEZE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MHX, LLC, a California company; MHX
HOLDINGS, LLC, a California company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. **CIV SB 2211557**

Representative Action Complaint

1. Failure to Pay All Minimum Wages
2. Failure to Pay Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Recordkeeping Penalties



1 Plaintiff BROOK FREEZE (“Plaintiff”), individually as the State of California’s designated
2 proxy under the Private Attorneys General Act (“PAGA”), and on behalf of other current and
3 former aggrieved employees, brings this representative action against Defendants MHX, LLC;
4 MHX HOLDINGS, LLC; and DOES 1 through 50 (collectively, “Defendants”), alleging as
5 follows:

6 **INTRODUCTION**

7 1. This is a case filed by Plaintiff, an aggrieved employee, seeking civil penalties
8 against Defendants for violations of the California Labor Code.

9 2. Plaintiff worked as an hourly, non-exempt employee for Defendants from July 2021
10 through December 2021. As a Class A-licensed Truck Driver, Plaintiff was required to work before
11 and after shifts without pay. Defendants required Plaintiff and other employees to clock in and out
12 only at their scheduled start and end times, but nonetheless knowingly required them to perform
13 “off the clock” pre and post trip work, such as connecting trailers and performing vehicle
14 inspections prior to and after their shifts.

15 3. Defendants also required Plaintiff and other employees to work through their meal
16 and rest breaks as a matter of company practice, and failed to pay Plaintiff and other employees for
17 such time. This resulted in an undercounting and underpayment for hours worked each pay period
18 for the Plaintiff and other employees.

19 4. Defendants also failed to pay meal or rest period premiums to Plaintiff and other
20 employees for such “on duty” breaks. Defendants thus failed to provide compliant meal and rest
21 periods (or premiums in lieu thereof) as required.

22 5. As a result of these violations, Defendants failed to timely pay Plaintiff and
23 aggrieved employees each pay period on paydays and upon separation of employment, and thus are
24 liable for waiting time and other statutory penalties.

25 6. Defendants’ employment policies and practices and payroll administration systems
26 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
27 employees.

7. In connection with Plaintiff's employment and the employment of others within the State of California, Defendants committed numerous systemic Labor Code violations for which Plaintiff now seeks to receiver civil penalties pursuant to Labor Code § 2698 *et seq.*

JURISDICTION & VENUE

8. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution.

9. Venue as to each defendant is proper in this judicial district under Code of Civil Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed Plaintiff in this county, and committed some of the alleged violations in this county.

PARTIES

A. Plaintiff Brook Freeze

10. Plaintiff Brook Freeze is a citizen of California over 18 years of age who worked for Defendants in San Bernardino County as an hourly, non-exempt employee. Plaintiff worked for Defendants in California from June 2021 to December 2021 as a driver distributing and transporting goods out of the Rancho Cucamonga location.

B. Defendants

11. Plaintiff is informed, believes, and alleges that Defendant MHX, LLC is a California limited liability company doing business and employing individuals in San Bernardino, California and throughout the state of California.

12. Plaintiff is informed, believes, and alleges that Defendant MHX Holdings, LLC is a California limited liability company doing business and employing individuals in San Bernardino, California and throughout the state of California. Defendants MHX, LLC and MHX Holdings, LLC are hereinafter referred to together as “Defendants.”

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown or uncertain to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of the factiously named defendants is responsible in some manner for the acts

1 and omissions alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true
2 names and capacities when they become known.

3 14. Defendants' website states that they operate a "full service logistics operation in
4 California" that provides "transload and transportation service which partners in moving product
5 via truck, rail, or vessel." Defendants allegedly provide "import and export services" for "steel
6 products, aluminum, lumber, wallboard, rebar, tires, dry build, break bulk, consumer goods, and
7 food grade material," and distribute such commodities to their final destination. Defendants, on
8 information and belief, operate 10 facilities throughout California, including in the cities of
9 Fontana, Carson, Vernon, Compton, Helendale, Rancho Cucamonga, and Stockton. "[Seven] of
10 these facilities are served by the BNSF and [three] are served by the Union Pacific," which operate
11 rail networks covering the United States.

12 15. Plaintiff is informed, believes, and alleges that all defendants in this action are
13 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
14 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
15 employees, suffers and permits them to work, and engages the workforce creating a common law
16 employment relationship. Additionally, all defendants have common ownership, common
17 management, interrelationship of operations, and centralized control over labor relations and are
18 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
19 omissions alleged herein. Defendants operate as employers of the employees in their business
20 operations.

21 16. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
22 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
23 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
24 such that the acts and omissions of each defendant are legally attributable to all others.

25 17. Plaintiff is informed, believes and alleges that the above-mentioned defendants
26 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or
27 regulating minimum wages and days of work and other provisions of the Labor Code with respect
28

1 to the aggrieved employees. As a result, they may be held personally liable under Labor Code
2 sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

3 PAGA ALLEGATIONS

4 18. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on
5 behalf of the State of California and the “aggrieved employees,” defined as follows:

- 6 a. All current and former hourly non-exempt employees of Defendants who
7 work or worked within the State of California at any time from March 25,
8 2021, through the date of judgment (the “PAGA Period”)

9 19. The State of California, via the Labor and Workforce Development Agency
10 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v.*
11 *Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the
12 plaintiff files suit is always the real party in interest.”])

13 20. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
14 and personally experienced one or more of the alleged Labor Code violations. Therefore, Plaintiff
15 is properly suited to act on behalf of the State of California and collect civil penalties for violations
16 committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff*
17 *v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
18 “aggrieved employee”—a person affected by one Labor Code violation committed by an
19 employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

20 21. “Notwithstanding any other provision of law, any provision of this code that
21 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
22 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a
23 violation of this code, may, as an alternative, be recovered through a civil action brought by an
24 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
25 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

26 22. On March 25, 2022, Plaintiff gave written notice by online filing with the LWDA
27 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
28 been violated, including the facts and theories to support the alleged violations (the “PAGA

1 Notice”). Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA
2 Notice is attached hereto as **Exhibit 1** and incorporated by reference.

3 23. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
4 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
5 actions taken to cure the alleged violations.

6 24. Now that at least 65 days have passed from Plaintiff first notifying Defendants of
7 these violations, without any notice of cure from Defendants or notice from the LWDA of its intent
8 to investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
9 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

10 25. Any allegations regarding violations of the IWC Wage Orders are enforceable as
11 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
12 hours than those fixed by the order or under conditions of labor prohibited by the order is
13 unlawful.”

14 **GENERAL ALLEGATIONS**

15 26. The facts and theories as set forth in the PAGA Notice (Exhibit 1) are incorporated
16 herein by reference as though fully set forth herein.

17 27. Plaintiff was employed by Defendants as a driver from June 2021 through December
18 2021. Plaintiff was an hourly, non-exempt employee throughout the duration of his employment.

19 28. Defendants failed to pay for all hours worked as a result of their practice of requiring
20 Plaintiff and other aggrieved employees to work off the clock, resulting in unpaid minimum,
21 regular, and overtime wages.

22 29. As a driver, Plaintiff was required by Defendants to perform work before and after
23 his shifts, without compensation. For example, he and other aggrieved employees were required to
24 be ready to load and drive their trucks at the time they clocked in and were only allowed to clock in
25 at their scheduled time. As a result, Plaintiff and the aggrieved employees were required to perform
26 numerous pre-driving tasks, such as connecting their trailers, checking fluids and tire pressure, and
27 completing pre-trip inspections before their permitted clock-in time.

1 30. Defendants were aware of the work performed “off the clock,” and required
2 employees to only clock in when they started driving (*i.e.*, at their scheduled start time). Similarly,
3 Plaintiff and others were required to clock out at their scheduled end time, but were nonetheless
4 required to complete post-driving work off the clock.

5 31. When Plaintiff tried clocking in to be compensated for all work performed, he was
6 instructed to only clock in at his scheduled start time, and not for the pre or post trip work
7 performed. Plaintiff is informed, believes, and thereon alleges that all drivers and non-exempt
8 employees employed by Defendants faced similar pressure and requirements to perform work “off
9 the clock” for which they were not paid. Defendants knew or should have known that this work was
10 being performed.

11 32. Furthermore, Defendants failed to consistently provide timely, off-duty 30-minute
12 meal periods to Plaintiff and Aggrieved Employees within the first five hours of work, and timely
13 second off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in
14 violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders.
15 (*See, e.g., Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the
16 terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of
17 pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.”])
18 Defendants’ policy and practice of not paying all meal period premiums at the required regular rate
19 of pay is a matter of common corporate policy and payroll administration such that it applies and
20 affected all other non-exempt employees.

21 33. Due to the number of routes required each day, and as directed by Defendants,
22 Plaintiff and other employees were required to eat lunch while driving their routes. However,
23 Defendants still required Plaintiff and other employees to clock out for a meal period, even when
24 they were required to work or drive or otherwise remain on-duty during that time. As such,
25 Defendants failed to provide compliant first and second meal periods (or compensation at the lawful
26 wage for work performed off-the-clock). Plaintiff understands that Defendants maintain a uniform
27 policy and businesses operations that apply the same pressure to other employees, and thus failing
28 to provide compliant meal periods to the entire group of Aggrieved Employees.

1 34. When Plaintiff and other Aggrieved Employees worked through and/or during meal
2 periods, Defendants failed to pay all minimum, regular, and/or overtime wages owed for that time
3 worked.

4 35. When Defendants did not provide compliant meal periods, Defendants failed to
5 always pay Plaintiff and other employees a meal period premium as required by Labor Code section
6 226.7. Although some meal period premiums were paid to Plaintiff and other employees during the
7 relevant period, Defendants did not pay all meal period premiums owed for late, short, missed, or
8 interrupted meal periods. Defendants' policy and practice of not paying all meal period premiums at
9 the lawful rate is a matter of common corporate policy and payroll administration such that it
10 applies and affected all other Aggrieved Employees and are evident from communications, data,
11 and records showing short, late, or missed meal periods without an associated meal period premium
12 on the corresponding employee wage statement.

13 36. Defendants also failed to authorize or *permit* ten-minute rest periods for every four
14 hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section
15 12 of the applicable IWC Wage Order. Defendants did not authorize rest periods and did not afford
16 sufficient staffing for Plaintiff and other employees to take compliant 10-minute rest periods in
17 accordance with California law. Legally compliant breaks were usually precluded due to Plaintiff's
18 and Aggrieved Employees' workload and the tasks required of them each day, and due to
19 Defendants' lack of compliant policies and practices with respect to 10-minute rest periods.

20 37. When Defendants did not provide a fully compliant rest period to Plaintiff or other
21 Aggrieved Employees, Defendants failed to pay Plaintiff and other Aggrieved Employees a rest
22 period premium at the lawful "regular rate of compensation" in violation of Labor Code section
23 226.7. On information and belief, Plaintiff alleges that Defendants did not pay a single rest period
24 premium to any of its employees. Plaintiff is informed, believes, and alleges that Defendants failed
25 to maintain lawful meal and rest period policies that apprised Plaintiff and other Aggrieved
26 Employees of their respective rights under California law.

27 38. With respect to the unpaid wages and meal and rest period premiums owed to
28 Plaintiff and Aggrieved Employees, Defendants failed to pay those wages on time each pay period

1 or upon separation of employment. Because Defendants did not pay Plaintiff and Aggrieved
2 Employees for all wages/premiums owed each pay period their employment, Defendants failed to
3 timely pay all wages owed each pay day or upon separation of employment (or within 72 hours
4 thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b
5 (paydays). *See Naranjo v. Spectrum Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

6 39. Defendants equally failed in their affirmative obligation to provide accurate itemized
7 wage statements each pay period to Plaintiff and Aggrieved Employees. Defendants issued wage
8 statements to Plaintiff and, on information and belief, Aggrieved Employees, which contain several
9 types of violations.

10 40. First, on each wage statement furnished, Defendants failed to accurately state the
11 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
12 Plaintiff and Aggrieved Employees earned regular and overtime wages, but were underpaid,
13 resulting in an inaccurate itemization of gross and net wages earned on those wage statements.
14 Defendants’ failure to pay meal and rest period premiums owed to Plaintiff and the Aggrieved
15 Employees also resulted in an inaccurate reflection of gross and net wages on employee wage
16 statements. *See Naranjo v. Spectrum Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

17 41. Second, on each wage statement furnished to Plaintiff and, on information and
18 belief, the Aggrieved Employees, Defendants failed to accurately state “all applicable hourly rates
19 in effect during the pay period and the corresponding number of hours worked at each hourly rate
20 by the employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff
21 and Aggrieved Employees do not accurately list the actual hours worked by employees, but instead
22 list deflated hours and wages.

23 42. Third, Defendants inaccurately listed total hours worked during the pay period in
24 violation of § 226(a)(2), as Plaintiff and Aggrieved Employees worked off-the-clock, resulting in an
25 inaccurate reflection of total hours worked on those corresponding wage statements.

26 43. Defendants’ wage statement issues described above rendered the wage statements
27 inaccurate and confusing to Plaintiff and Aggrieved Employees, concealing the underpayments and
28

1 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and
2 aggrieved employees as the sole documentary evidence of their respective earnings.

3 44. Plaintiff and Aggrieved Employees suffered injury in the form of confusion
4 regarding amounts paid for hours worked, and in the form of concealment of the common payroll
5 practices causing the violations and underpayment of wages and wage statement deficiencies as
6 addressed in this Complaint.

7 45. Indeed, Plaintiff and, on information and belief, Aggrieved Employees were
8 misinformed and misled by the wage statements wages, hours, and earnings. As a result of the
9 inaccuracies on the wage statements, Plaintiff and, on information and belief, Aggrieved Employees
10 were led to believe that net and gross wages reflected were a complete and accurate reflection of the
11 wages actually earned under California law.

12 46. Defendants' wage statement violations were knowing and intentional as a matter of
13 law with respect to Plaintiff and California Aggrieved Employees given that the legal obligation
14 was not disputed, the wage statement and wage laws are clear and unambiguous as written, and
15 because Defendants nevertheless failed to comply despite the means and ability to do so.

16 47. Because of the violations set forth in this Complaint, including Defendants' failure
17 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay
18 (*i.e.*, unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC
19 Wage Orders by failing to maintain records showing accurate daily hours worked at the
20 corresponding wage rate, and the wages paid to each employee.

21 48. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
22 knowingly and intentionally caused harm to Plaintiff and Aggrieved Employees. Plaintiff is
23 informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor
24 Code and IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent
25 with their obligations under California law.

26 49. Proof of common unlawful business practices, which Plaintiff experienced and is
27 representative of, will establish the right of Aggrieved Employees to recover on the causes of action
28 alleged herein.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL REGULAR WAGES**

3 **Labor Code §§ 1194, 1194.2, 1197, 2698 *et seq.***

4 50. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 51. Labor Code section 2699(f) provides: “For all provisions of this code except those
6 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
7 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs
8 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
10 employee per pay period for each subsequent violation.”

11 52. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
12 of an employer who violates, or causes to be violated, a section of this chapter or any provision
13 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
14 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
15 underpaid employee for each pay period for which the employee was underpaid in addition to an
16 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
17 dollars (\$100) for each underpaid employee for each pay period for which the employee was
18 underpaid in addition to an amount sufficient to recover underpaid wages.”

19 53. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
20 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
21 any employee a wage less than the minimum fixed by an applicable state or local law, or by an
22 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
23 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
24 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
25 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each
26 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
27 underpaid employee for each pay period for which the employee is underpaid regardless of whether
28 the initial violation is intentionally committed.”

54. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Aggrieved Employees at least the lawful wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders).

55. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Labor Code §§ 2698, *et seq.*

56. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

57. Defendants failed in their affirmative obligation to pay Plaintiff and Aggrieved Employees no less than one and one-half times their respective “regular rate of pay” for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

58. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

///

1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **Labor Code §§ 226.7, 512, 2698, *et seq.***

4 59. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 60. Defendants willfully failed in their affirmative obligation to consistently provide
6 Plaintiff and Aggrieved Employees compliant, duty-free meal periods of not less than 30 minutes
7 beginning before the fifth hour for each work period of more than five hours per day and a second
8 duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
9 violation of Labor Code sections 226.7, 512, 1198, and the IWC Wage Orders (the “Meal Periods”
10 sections of the applicable orders).

11 61. Further, Defendants willfully failed in their affirmative obligation to consistently pay
12 Plaintiff and Aggrieved Employees one additional hour of pay at the respective regular rate of
13 compensation for each workday that a fully compliant meal period was not provided, in violation of
14 Labor Code sections 226.7, 512, and 1198 and the IWC Wage Orders (the “Meal Periods” sections
15 of the applicable orders).

16 62. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
17 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
18 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
19 to the extent permitted by law, including under Labor Code section 2699(g).

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **Labor Code §§ 226.7, 516, 2698, *et seq.***

23 63. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 64. Defendants willfully failed in their affirmative obligation to consistently authorize
25 and permit Plaintiff and Aggrieved Employees to receive compliant, duty-free rest periods of not
26 less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of
27 Labor Code sections 226.7, 516, and 1198 and the IWC Wage Orders (the “Rest Periods” sections
28 of the applicable orders).

65. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and Aggrieved Employees one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7 and 1198 and the IWC Wage Orders.

66. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

FIFTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Labor Code §§ 204, 204b, 210, 2698, *et seq.*

67. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

68. Defendants willfully failed in their affirmative obligation to timely pay all wages and meal and rest period premiums earned by Plaintiff and Aggrieved Employees twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

69. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Labor Code § 226, 226.3, 2698 *et seq.*

70. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

71. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and Aggrieved Employees in violation of Labor Code section 226(a).

72. Labor Code section 226.3 provides: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

73. Defendants failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a)(1)-(9) because Plaintiff and aggrieved employees were not paid for all hours worked at the proper wage rates and the wage statements reflected inaccurate totals, including gross and net wages earned, total hours worked, applicable rates in effect and corresponding number of hours worked.

74. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT

Code §§ 201 through 203, 2698 *et seq.*

75. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

76. Defendants willfully failed in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are those to Defendants' failure to pay for all hours worked and for meal and rest period premiums.

77. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

EIGHTH CAUSE OF ACTION
RECORDKEEPING VIOLATIONS

Labor Code § 1174

78. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

79. Labor Code section 1174 provides: “Every person employing labor in this state shall: ... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

80. Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five hundred dollars (\$500).”

81. Defendants willfully failed in their affirmative obligation to maintain accurate records showing the hours worked daily and wages paid to the aggrieved employees, in violation of Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the applicable orders).

82. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code section 1174.5, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

///

1 **PRAYER FOR RELIEF**

2 Plaintiff prays for judgment as follows:

- 3 a. For an award of all civil penalties under the Labor Code section 2698 *et seq.* and
4 other applicable Labor Code provisions;
- 5 b. For an award of reasonable attorneys' fees and costs of suit, including expert fees, to
6 the extent permitted by law, including under Labor Code section 2699(g);
- 7 c. For any recoverable pre- and post-judgment interest; and
- 8 d. For such other relief the Court deems just and proper.

9
10 Dated: March June 7, 2022

Ferraro Vega Employment Lawyers, Inc.

11 
12 _____
13 Nicholas J. Ferraro
14 Attorney for Plaintiff Brook Freeze