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NESTOR HERRERA HERNANDEZ on behalf of
themselves and all others similarly aggrieved

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

CHRIS HA, an individual; PEDRO
HUERTA, an individual; NESTOR
HERRERA HERNANDEZ, an individual; on
behalf of themselves and others similarly
aggrieved,

Plaintiffs,

vs.

5TH AXIS, INC., a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2022-00017229-CU-OE-CTL
REPRESENTATIVE ACTION

Assigned for All Purposes To: Richard S.
Whitney

**FIRST AMENDED COMPLAINT FOR
REPRESENTATIVE ACTION FOR
PENALTIES UNDER PRIVATE
ATTORNEYS GENERAL ACT, LABOR
CODE § 2698 *et seq.* FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code §§ 510 and 1198;
3. Meal Period Liability Under Labor Code §§ 226.7, 512(a), 516, and 1198;
4. Rest-Break Liability Under Labor Code §§ 226.7, 516, and 1198;
5. Violation of Labor Code §§ 226(a) and 1174;
6. Violation of Labor Code § 204;
7. Violation of Labor Code §§ 201, 202, 203;
8. Violation of Labor Code §§ 246, 248.1, 248.2 and 248.5;
9. Violation of Labor Code 2810.5; and
10. Failure to Reimburse Expenses and Safety Equipment Labor Code §§ 2802, 6401, 6403.

DEMAND FOR JURY TRIAL

Original Complaint filed: May 6, 2022

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1 Plaintiffs PEDRO HUERTA and NESTOR HERRERA HERNANDEZ (hereinafter
2 “Plaintiffs”) on behalf of themselves and all other similarly Aggrieved Employees complain of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. This is a Representative Action, pursuant to the Private Attorneys General Act of
6 2004, Labor Code § 2698 *et seq.* (“PAGA”) on behalf of Plaintiffs and similarly situated
7 aggrieved employees who currently work or formerly worked as non-exempt, hourly employees as
8 machinists and in related positions (“Aggrieved Employees” or “Employees”) for Defendants 5TH
9 AXIS INC.; and DOES 1 through 10 (all defendants being collectively referred to herein as
10 “Defendants”) during the liability period. From at least one year prior to the date Plaintiffs began
11 the process of exhausting the administrative requirements pursuant to Labor Code § 2698 *et seq.*
12 and continuing through resolution (the “liability period”), Defendants have had a consistent policy
13 of failing to timely pay all wages due to their Employees during their employment and timely
14 upon separation from employment, failing to provide Employees with meal and rest periods,
15 failing to reimburse business expenses, and failing to issue accurately itemized wage statements,
16 among other violations. Plaintiffs allege that Defendants violated various provisions of the
17 California Labor Code and relevant orders of the Industrial Welfare Commission (“IWC”) and
18 seek redress for these violations in the form of civil penalties and other amounts as authorized
19 under the PAGA.

20 2. Plaintiffs were employed during the relevant period by Defendants as a non-
21 exempt, hourly machinists, with job duties that included but were not limited to, operating
22 production equipment, performing in-process inspection of parts produced, and recording
23 production details into manufacturing software. They worked based out of Defendants’ facilities in
24 San Diego County, which operated on a twenty-four-hour basis generally with three shifts of eight
25 hours. They and their fellow Aggrieved Employees were also required to work similar shifts on
26 Saturdays, usually around twice each month.

27 3. Plaintiffs and the similarly Aggrieved Employees worked for Defendants as non-
28 exempt, hourly employees in positions such as machinists and in related positions with

responsibilities for performing engineering, design, and manufacturing tasks other related tasks at the behest of Defendants, including at their California locations and in San Diego county. Upon information and belief, Plaintiffs were employed by Defendants and (1) shared similar job duties and responsibilities; (2) were subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Aggrieved Employees who served in similar and related positions.

4. Defendants required Plaintiffs and the Aggrieved Employees to work off the clock and failed to record accurate time worked by these Employees, failed to pay them at the appropriate rates for all hours worked, and provided Plaintiffs and the Aggrieved Employees with inaccurate wage statements that prevented them from learning of these unlawful pay practices. Defendants also failed to provide Plaintiffs and the Aggrieved Employees with lawful meal and rest periods, as Employees were required to remain under Defendant's control and were not provided with the opportunity to take full uninterrupted and timely and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

5. Defendant 5TH AXIS, INC. is a California corporation. It describes itself as a "sophisticated engineering, design, and manufacturing firm specializing in the aerospace, medical, and defense industries. It maintains a headquarters and facilities in San Diego County and conducts business throughout California. Upon information and belief, at all relevant times, 5TH AXIS, INC. implemented and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiffs and other Aggrieved Employees, regardless of their location or position. Upon information and belief, Defendants also maintain a centralized Payroll department to process payroll for all non-exempt, hourly paid employees working for Defendants in California, including Plaintiffs and other Aggrieved Employees. Further, upon information and belief, Defendants follow the same wage payment policies and practices and issue the same or similarly formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Plaintiffs and other Aggrieved Employees, irrespective of their location,

1 position, or manner in which each employee's employment ended. In other words, Defendants
2 utilized the same methods and formulas when calculating wages due to Plaintiffs and other
3 Aggrieved Employees in California, and in unlawfully rounding hours worked away from
4 Aggrieved Employees, requiring them to work off the clock, and miscalculating and underpaying
5 the overtime wages owed to them.

6 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure § 410.10 and Labor Code § 2698, *et seq.* ("the PAGA"). This Action is brought as a
8 Representative Action on behalf of similarly Aggrieved Employees of Defendants pursuant to the
9 PAGA. Venue as to Defendants is proper in this judicial district pursuant to 28 U.S.C. §§ 84(c)(1),
10 1391(c), and 1446. Upon information and belief, the obligations and liabilities giving rise to this
11 lawsuit occurred at least in part in the County of San Diego and Defendants are headquartered and
12 maintain offices and facilities out of which Plaintiffs and other Aggrieved Employees are based in
13 San Diego County and in this judicial district.

14 7. The true names and capacities, whether individual, corporate, associate, or
15 whatever else, of the Defendants sued herein as Does 1 through 10, inclusive, are currently
16 unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names under Code of
17 Civil Procedure § 474. Plaintiffs are informed and believe and thereon allege that Defendants
18 designated herein as Does 1 through 10, inclusive, and each of them, are legally responsible in
19 some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend
20 this Complaint to reflect the true names and capacities of the Defendants designated herein as
21 Does 1 through 10 when their identities become known.

22 8. Plaintiffs are informed and believe and thereon allege that each Defendant acted in
23 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
24 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
25 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
26 all respects as the employers or joint employers of Employees. Defendants exercised control over
27 the wages, hours or working conditions of Employees, created and implemented the policies and
28 practices that governed the employment of Plaintiffs and the Aggrieved Employees, or suffered or

1 permitted Plaintiffs and the other Employees to work, or engaged, thereby creating a common law
2 employment relationship, with the Aggrieved Employees. Therefore, Defendants employed or
3 jointly employed the Aggrieved Employees.

4 **FACTUAL BACKGROUND**

5 9. The Aggrieved Employees, including Plaintiffs, are non-exempt employees
6 pursuant to the applicable Wage Order of the Industrial Welfare Commission ("IWC").
7 Defendants hire Employees who work in non-exempt positions at the direction of Defendants in
8 the State of California. Plaintiffs and the Aggrieved Employees were either not paid by
9 Defendants for all hours worked or were not paid at the appropriate minimum, regular and
10 overtime rates. Among other violations, Defendants also failed to pay Plaintiffs and the
11 Aggrieved Employees all wages due and owing, including by requiring off the clock work, made
12 unlawful deductions from their pay, miscalculated overtime payments, failed to provide meal and
13 rest breaks, failed to reimburse necessary business expenses, and failed to furnish accurate wage
14 statements, all in violation of various provisions of the California Labor Code and applicable
15 paragraphs of the IWC Wage Orders.

16 10. During the course of Plaintiffs and the Aggrieved Employees' employment with
17 Defendants, they were not paid all wages they were owed at the appropriate rates of pay,
18 including for all work performed (resulting in "off the clock" work) and for all overtime hours
19 worked, and were forced to work off-the-clock and endure unlawful time shaving, rounding,
20 miscalculation, or failure to record. Plaintiffs, and upon information and belief the other similarly
21 Aggrieved Employees, generally worked at least five to six shifts per week at Defendants' behest
22 in locations in California. Plaintiffs were generally scheduled to work shifts of at least eight hours
23 in scheduled duration, but worked substantially more off the clock hours and overtime hours for
24 which he and the Aggrieved Employees were not paid or were not paid at the correct rates.

25 11. More specifically, Defendants operated machine shops and facilities on a twenty-
26 four-hour schedule, with three shifts working 8.5 hours shifts (including an automatically
27 deducted half hour meal period), and Plaintiffs generally worked five shifts during the week and
28 additional shifts on Saturdays. On occasion, Plaintiffs would work up to ten hours or more on a

1 shift, but Defendant maintained a strict and unlawful policy of refusing to pay overtime during
2 weekly work shifts over eight hours in duration. Upon information and belief, the only time when
3 overtime was permitted was on Saturday work shifts which took the Aggrieved Employees over
4 forty hours for the work week. Defendants also paid a weekend premium wage for employees
5 who worked the weekend, which they paid at a set rate for the hours worked that day. Defendants
6 thus unlawfully failed to pay all overtime wages when and if they did pay them by failing to
7 incorporate all forms of remuneration in the regular rate used to calculate and pay overtime. This
8 miscalculated overtime was also not paid by Defendants during any weekly shift scheduled for
9 eight hours despite the off the clock hours worked which resulted in Plaintiffs and the other
10 Aggrieved Employees working more than eight hours on a shift without being paid for it and
11 without being paid at the correctly calculated hourly overtime rate of pay.

12 12. Defendants also followed unlawful rounding and time shaving practices and
13 required substantial off the clock work, including before and after work shifts. Employees were
14 expected to ensure temperature/health screenings before entering the facility, then were required
15 to clock in before their scheduled shift start time and travel to their assigned work stations and
16 prepare for their daily job duties so they could be considered to be on time for their work shifts
17 and ready to begin at their scheduled start time. This often included conducting a shift transition
18 meeting with the outgoing Employees or else reviewing written instructions about important
19 information for the shift. All this time when Aggrieved Employees were under Defendants'
20 control prior to the scheduled shift start time was rounded away from Aggrieved Employees to
21 their substantial detriment.

22 13. Further off the clock work occurred after the end of scheduled work shifts, as
23 Defendants again required Plaintiffs and the outgoing Aggrieved Employees to conduct shift
24 transition meetings with the oncoming shift. They also had to travel through the facility to exit at
25 the end of shifts. Upon information and belief, any such time was never counted by Defendants as
26 hours worked because they followed a uniformly applied policy and practice of rounding time
27 entries down to conform to the scheduled shift end times to the substantial detriment of the
28 Aggrieved Employees. Plaintiffs and the other similarly Aggrieved Employees were also required

1 to clock in and out for work shifts and meal periods, but upon information and belief they were
2 not paid based on the actual hours worked and instead Defendants paid them for their scheduled
3 hours under a uniformly applied policy of unlawful rounding away hours worked and under
4 Defendants' control to the Aggrieved Employees substantial detriment.

5 14. More specifically, to facilitate and attempt to excuse all this off the clock work,
6 Defendants implemented a uniform policy and practice of "permitting" Aggrieved Employees to
7 clock in up to seven minutes before their scheduled shift start time and seven minutes after. This
8 time was not for doing whatever they wanted, and Plaintiffs and the Aggrieved Employees would
9 clock in and then walk to their workstations and get prepared for the shift and conduct any shift
10 transitions. During this time when they were on the clock but yet also off the clock and not
11 getting paid by Defendants, the Aggrieved Employees were under Defendants' control and were
12 not free to do as they saw fit. The same applied at the end of the work shifts, when Defendants
13 uniformly applied unlawful policy resulted in substantial and systematic off the clock work as
14 addressed above despite the fact they were still technically on the clock due to unlawful rounding.

15 15. Defendants also implemented strict and demanding production and performance
16 measuring goals and required that machines continue running at all times efficiently and
17 productively. When shifts were understaffed, this requirement resulted in one machinist operating
18 and monitoring multiple machines and resulted in further off the clock work and missed or
19 shortened or untimely meal and rest breaks. Defendants also required Aggrieved Employees to
20 attain minimum daily production quotas, for example 130 parts produced per shift, yet
21 Defendants did not incentivize employees for exceeding these quotas. Instead, only if Plaintiffs
22 and the Aggrieved Employees failed to attain these difficult to achieve standards would
23 Defendants' managers counsel them and threaten adverse consequences leading to termination.
24 This ongoing management pressure drove Aggrieved Employees to endure substantial off the
25 clock work and time shaving and rounding to their substantial detriment.

26 16. Defendants had a company-wide policy and/or practice of discouraging and
27 impeding Plaintiffs and other Aggrieved Employees from recording or else paying for hours
28 worked that were outside of their scheduled shifts, or else of rounding them away from

1 Employees, in order to limit the amount of overtime employees could accrue. Defendants
2 automatically deducted 30 minutes for a meal period on every shift without attention to whether it
3 was late or missed or shortened. Defendants also inexplicably and uniformly failed to pay
4 overtime during each daily work shift for any hours over eight, and would only begin paying
5 overtime at the end of the week if and when an Aggrieved Employee worked a Saturday shift and
6 was already over forty hours for the week. This policy of limiting overtime, coupled with
7 Defendants' understaffing policy and assignment of heavy workloads and productivity
8 requirements led Aggrieved Employees to remain under Defendants' control and work off-the-
9 clock before and after their scheduled shift times, and perform work off the clock before and after
10 shifts, in order to complete their assigned tasks.

11 17. Due to Defendants' uniform practices of understaffing, assigning heavy workloads
12 and production requirements, and failure to adhere to alleged break schedules, Plaintiffs and other
13 Aggrieved Employees were forced to forego meal periods, had their meal periods interrupted or
14 provided late, and/or were otherwise not relieved of all duties during meal periods. To prevent
15 employees from accruing meal period penalties, upon information and belief, Defendants'
16 management also adjusted any employee time records showing meal period beginning and ending
17 times, or rounded away actual hours worked while on-duty during an alleged meal period, and
18 pressured employees to clock in and out for meal periods to reflect compliant meal periods, but
19 required them to continue working during breaks or else provided them after five hours of work
20 during a scheduled shift. Defendants therefore systematically failed to pay Aggrieved Employees
21 for actual hours worked during unpaid meal periods because these hours were incorrectly
22 recorded or were not recorded at all.

23 18. In view of the above described unlawful rounding and off the clock work,
24 Defendants willfully failed to pay all overtime wages owed to Plaintiffs and other Aggrieved
25 Employees. During the relevant time period, Aggrieved Employees were not paid overtime
26 premiums (1.5 times their regular rate of pay) for all of the hours they worked in excess of eight
27 hours in a day, in excess of twelve hours in a day, and/or in excess of forty hours in a week, as all
28 hours worked were not recorded. An employee's regular rate of pay includes all remuneration for

1 employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and
2 incentive pay. Defendants failed to pay Aggrieved Employees the correct overtime rates for the
3 recorded overtime hours they generated. For example, in addition to their hourly wage, Defendants
4 paid Aggrieved Employees an hourly bonus for working weekends. However, in violation of the
5 California Labor Code, Defendants failed to incorporate all remunerations, including such
6 incentive pay and nondiscretionary bonuses, into the calculation of the regular rate of pay for
7 purposes of calculating the overtime wage rates. During times when Aggrieved Employees
8 worked overtime and received these other forms of pay, Defendants neglected to include all forms
9 of remuneration in the regular rate, which in turn led to a systematic failure to pay all overtime
10 wages by paying a lower overtime rate than required under the Labor Code.

11 19. As a result of the above described unlawful requirements to work off the clock, the
12 failure to accurately record all hours worked and pay wages at the correct rates, and the other
13 wage violations they endured at Defendants' hands, Plaintiffs and the Aggrieved Employees were
14 not properly paid all wages earned and all wages owed to them by Defendants, including when
15 working more than eight hours in any given day and/or more than forty hours in any given week,
16 and including double-time wages for all hours over twelve worked on any given work shift, in
17 violation of Labor Code § 510 and paragraph 3(A) of the applicable IWC Wage Orders. As a
18 result of Defendants' unlawful policies and practices, Plaintiffs and Aggrieved Employees
19 incurred overtime hours worked for which they were not adequately and completely
20 compensated, in addition to the hours they were required to work off the clock. Therefore,
21 Defendants had a consistent policy or practice of failing to pay Employees for all hours worked
22 and failing to pay minimum wages for all time worked, as required by California law. Also,
23 Defendants had a consistent policy or practice of failing to pay Employees overtime
24 compensation at premium overtime rates for all hours worked.

25 20. Defendants also failed to provide all the legally required unpaid, off-duty meal
26 periods and all the legally required paid, off-duty rest periods to Plaintiffs and the other Aggrieved
27 Employees, as required by paragraphs 11 and 12 of the applicable IWC Wage Order and the Labor
28 Code. Plaintiffs and other Aggrieved Employees were required to perform work as ordered by

1 Defendants for more than five hours during a shift, but were often required to do so without
2 receiving lawful meal breaks. Additionally, as addressed above, Defendants followed a practice of
3 under-reporting or rounding down hours worked, and required off the clock work, in a manner that
4 would impact when Employees were to receive meal periods and rest breaks, leading to further
5 violations.

6 21. Defendants' meal and rest break policies also resulted in uniform and systematic
7 violations of the Labor Code, including Sections 512 and 226.7, and the IWC Wage Orders,
8 including paragraphs 11 and 12. Defendants failed to provide lawful, timely and duty free meal
9 periods before the fifth hour of each work shift without regard to whether employees were actually
10 lawfully provided them. On shifts worked over ten hours, Defendants failed to provide Plaintiffs
11 and the Aggrieved Employees with a second, duty-free meal period. Defendants implemented a
12 break policy which also systematically failed to authorize and permit Plaintiffs and the similarly
13 Aggrieved Employees with a duty-free, net ten minute rest break for every four hours worked, or
14 major fraction thereof, and unlawfully failed to provide first and second rest breaks during the first
15 second rest breaks during scheduled eight hour work shifts.

16 22. California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable
17 IWC Wage Order require employers to provide meal periods and to pay an employee one
18 additional hour of pay at the employee's regular rate for each work day that a meal or rest period
19 is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage
20 Order, an employer may not require, cause or permit an employee to work for a period of more
21 than five hours per day without providing the employee with an uninterrupted meal period of not
22 less than thirty minutes, except that if the total work period per day of the employee is not more
23 than six hours, the meal period may be waived by mutual consent of both the employer and the
24 employee. Under California law, first meal periods must start after no more than five hours.
25 *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

26 23. Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also
27 require employers to provide a second meal period of not less than thirty minutes if an employee
28 works over ten hours per day or to pay an employee one additional hour of pay at the employee's

1 regular rate, except that if the total hours worked is no more than twelve hours, the second meal
2 period may be waived by mutual consent of the employer and the employee only if the first meal
3 period was not waived.

4 24. Defendants followed a uniform practice and/or policy of enforcing strict production
5 goals, requiring machines to remain running throughout work shifts, and understaffing which
6 resulted in a lack of adequate meal period coverage, as there were either too few employees on
7 duty to maintain production quotas or Aggrieved Employees had to remain at their machines
8 working until they could be relieved. As they only were able to take breaks when approved by the
9 managers, despite the existence of any alleged schedules, Aggrieved Employees were compelled
10 to work through breaks or take them late or for less than their required duration. Defendants also
11 discouraged Aggrieved Employees from leaving their premises during meal periods thus requiring
12 Employees to remain under Defendants' control during their meal periods.

13 25. Aggrieved Employees were also often required to take their meal periods late after
14 having worked in excess of five hours or more into a shift due to the heavy workload and
15 production demands and lack of meal period coverage. Thus, the Aggrieved Employees performed
16 work during meal periods and received no compensation for this time. Moreover, Defendants did
17 not provide Aggrieved Employees with a second 30-minute meal period on days that they worked
18 in excess of ten hours in one day. Plaintiffs and other Aggrieved Employees did not sign valid
19 meal period waivers on days that they were entitled to meal periods and were not relieved of all
20 duties. To the extent Defendants rely upon any alleged second meal period waivers, such alleged
21 waivers are, upon information and belief, either unenforceable or were revoked or otherwise not
22 entered into with all the Aggrieved Employees, and they are inapplicable to any shifts over twelve
23 hours.

24 26. As a result, Defendants' failure to provide the Plaintiffs and the Aggrieved
25 Employees with all legally required off-duty, unpaid meal periods and all the legally required off-
26 duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof.
27 Defendants have either failed to maintain required records of when meal periods were provided or
28 failed to produce them in response to Plaintiffs' timely and lawful requests. Defendants'

1 management also inputted or adjusted timekeeping entries, or required employees to do so, to
2 reflect scheduling conformance rather than actual times worked. Defendants also failed to pay
3 Employees “premium pay,” i.e. one hour of wages at each Employee’s effective hourly rate of
4 pay, for each meal period or rest break that Defendants failed to provide or deficiently provided.

5 27. Therefore, Plaintiffs and the Aggrieved Employees were unable to take off-duty
6 breaks or were otherwise not provided with the opportunity to take required breaks due to
7 Defendants’ policies and practices. On the occasions when Plaintiffs and the Aggrieved
8 Employees were provided with a meal period, it was often untimely or interrupted, or was
9 impermissibly shortened. Furthermore, Defendants engaged in a company-wide practice and/or
10 policy of not paying all meal period premiums owed when compliant meal periods are not
11 provided. Because of this practice and policy, Plaintiffs and other Aggrieved Employees have not
12 received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent
13 that Defendants did pay Aggrieved Employees for missed, late, and interrupted meal periods,
14 Defendants did not pay them at the correct rate of pay for premiums because Defendants
15 systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary
16 bonuses, or other forms of remuneration, in the regular rate of pay.

17 28. Similar violations resulted from Defendants’ failure to authorize and permit
18 Plaintiffs and the Aggrieved Employees to take duty-free, net ten minute rest breaks for every
19 four hours of shift work, or major fraction thereof. As addressed above, Plaintiffs and the other
20 similarly situated Aggrieved Employees were either not permitted the opportunity to take a rest
21 break, had rest periods unlawfully shortened or provided them untimely or not duty-free, or were
22 otherwise required to remain under Defendants’ control during breaks.

23 29. To comply with its obligation to authorize and permit rest periods under California
24 Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any
25 control over how employees spend their break time, and relieve their employees of all duties—
26 including the obligation that an employee remain on call. A rest period, in short, must be a period
27 of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

28 30. During the relevant time period, Defendants therefore regularly failed to authorize

1 and permit Aggrieved Employees to take a ten-minute rest period per each four-hour period
2 worked or major fraction thereof. As with meal periods, Defendants' policies and practices of
3 understaffing, assignment of heavy workloads, and imposition of strict production quotas
4 prevented Aggrieved Employees from being relieved of all duty in order to take compliant rest
5 periods. Defendants also failed to schedule rest periods, which coupled with Defendants' failure to
6 provide adequate rest period coverage led to Aggrieved Employees not being authorized and
7 permitted to take rest periods.

8 31. Furthermore, Defendants effectively maintained an on-premises rest period policy,
9 as production demands and management pressure required Aggrieved Employees to remain on the
10 work premises during their rest periods. Defendants' rest period policy prevented Aggrieved
11 Employees from being relieved of all duties for rest periods and caused them to perform work
12 during rest periods. Additionally, Plaintiffs and the Aggrieved Employees were and are under
13 Defendants' control when they are working through rest breaks, and an employer cannot impose
14 any restraints on employees not inherent in the rest period requirement itself. Defendants have
15 provided either impermissibly shortened or untimely meal and rest breaks to Plaintiffs and the
16 Aggrieved Employees.

17 32. As a result of Defendants' practices and policies, Aggrieved Employees worked
18 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving
19 all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiffs
20 estimate they would miss their rest periods at least four times per week due to understaffing or to
21 accomplish all the work-related duties and production requirements Defendants expected them to
22 complete during their work shifts

23 33. Plaintiffs and the Defendants' Aggrieved Employees were therefore not authorized
24 and permitted to take lawful rest periods, were systematically required by Defendants to work
25 through or during breaks, and were not provided with one hour's wages in lieu thereof. They
26 were required to remain on-duty during breaks or portions of their breaks, thus making them
27 either untimely or shortened and not duty-free, or failed to provide them at all or unlawfully
28

1 combined them with other breaks, and they were also prevented from leaving the premises during
2 rest breaks under Defendants' policies.

3 34. Defendants have also consistently violated Labor Code § 221 by unlawfully
4 collecting or deducting the Employees' earned wages, including by the above described off the
5 clock work and on-duty work while on unpaid meal breaks. By not compensating Employees for
6 all hours worked, Defendant unlawfully deducted wages earned by and owed to Plaintiffs and the
7 Aggrieved Employees, in violation of Labor Code § 221.

8 35. As a result of the above addressed illegal policies and practices, Defendants have
9 engaged in and enforced the following additional unlawful practices and policies against
10 Plaintiffs and the Aggrieved Employees:

- 11 a) failing to pay all wages owed to Aggrieved Employees who either were
12 discharged, laid off, or resigned in accordance with the requirements of Labor
13 Code §§ 201, 202, 203;
- 14 b) failing to pay all wages owed to the Aggrieved Employees twice monthly in
15 accordance with the requirements of Labor Code § 204;
- 16 c) failing to pay Aggrieved Employees all wages owed, including all meal and rest
17 period premium wages;
- 18 d) failing to maintain accurate records of Aggrieved Employees' earned wages and
19 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the
20 applicable IWC Wage Orders; and

21 36. Defendants have also consistently failed to provide Employees with timely,
22 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
23 including by the above-described unlawful rounding and off the clock work requirements and
24 failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks.
25 Defendants have also made it difficult to account with precision for the unlawfully withheld meal
26 and rest period compensation owed to Plaintiffs and the Aggrieved Employees, during the liability
27 period, because they did not implement and preserve a record-keeping method as required for non-
28 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable

1 California Wage Orders. Upon information and belief, time clock punches were not maintained, or
2 were not accurately maintained, for work shifts and meal periods, which were automatically
3 presumed by Defendants to have been lawfully provided when they were not. Defendants also
4 failed to accurately record and pay for all regular and overtime hours worked and submitted by
5 Plaintiffs and the Aggrieved Employees, as Defendants' uniformly applied policies and practices
6 resulted in timekeeping records and corresponding payroll records reflecting that Employees
7 worked less hours than they actually worked.

8 37. Defendants have thus also failed to comply with Labor Code § 226(a) by
9 inaccurately reporting total hours worked and total wages earned by Plaintiffs and the Aggrieved
10 Employees, along with the appropriate applicable rates, among others requirements. Defendants
11 have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by
12 failing to maintain time records showing when the employee begins and ends each work period,
13 meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by
14 itemizing in wage statements all deductions from payment of wages and accurately reporting total
15 hours worked by the Aggrieved Employees.

16 38. During the relevant time period, Defendants have knowingly and intentionally
17 provided Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For
18 example, Defendants issued uniform wage statements to Plaintiffs and other Aggrieved
19 Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
20 address of the legal entity that is the employer; and all applicable hourly rates in effect during the
21 pay period, including overtime rates of pay, and the corresponding number of hours worked at
22 each hourly rate. Specifically, Defendants violated Labor Code §§ 226(a)(1), 226(a)(2), 226(a)(5),
23 226(a)(8), and 226(a)(9). Because Defendants did not record the time Aggrieved Employees spent
24 working off-the-clock and during deducted time from their meal periods that were missed and/or
25 interrupted (and therefore time for which they should have been paid), Defendants did not list the
26 correct amount of gross wages and net wages earned by Aggrieved Employees, as required under
27 Labor Code §§ 226(a)(1) and 226(a)(5).

1 39. For the same reason, Defendants failed to accurately list the total number of the
2 hours worked by Aggrieved Employees, in violation of § 226(a)(2), and failed to list the
3 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
4 number of hours worked at each hourly rate, in violation of § 226(a)(9). Furthermore, because
5 Defendants did not calculate Aggrieved Employees' regular rate of pay correctly for purposes of
6 paying overtime wages, Defendants did not list the correct amount of gross wages earned by
7 Aggrieved Employees in compliance with § 226(a)(1) and did not list the correct amount of net
8 wages earned by other Aggrieved Employees in violation of § 226(a)(5). Defendants also failed to
9 correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime
10 rates of pay and correct rates of pay for premiums, in violation of § 226(a)(9).

11 40. Furthermore, because Defendants did not calculate the regular rate of pay correctly
12 for purposes of paying overtime wages to the Aggrieved Employees, Defendants did not list the
13 correct amount of gross wages they earned in compliance with § 226(a)(1) and did not list the
14 correct amount of net wages earned by other Aggrieved Employees in violation of § 226(a)(5).
15 Defendants also failed to correctly list all applicable hourly rates in effect during the pay period,
16 namely, correct overtime rates of pay and correct rates of pay for premiums, in violation of §
17 226(a)(9).

18 41. Defendants also issued uniform wage statements to Aggrieved Employees that
19 failed to correctly list the address of the legal entity of the actual employer in violation of §
20 226(a)(8). The purpose of § 226(a)(8) is to provide California employees with transparency as to
21 the true identity of their employer, to allow the employee to contact their employer during
22 employment in the future for various reasons, including filing an administrative claim, judicial
23 claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc.
24 The wage statements Defendants issued to Plaintiffs, and upon information and belief the other
25 Aggrieved Employees, listed 5TH AXIS INC. as the employer but did not include any address for
26 the employer. Defendants have also failed to comply with paragraph 7 of the applicable California
27 IWC Wage Orders by failing to maintain time records showing when the employee begins and
28 ends each work period, meal periods, and wages earned pursuant to Labor Code § 226.7, and total

1 daily hours worked by itemizing in wage statements all deductions from payment of wages and
2 accurately reporting total hours worked.

3 42. Because Defendants failed to provide the correct net and gross wages earned,
4 applicable rates of pay, and number of total hours worked on wage statements, the Aggrieved
5 Employees have been prevented from verifying, solely from information on the wage statements
6 themselves, that they were paid correctly and in full. Instead, the Aggrieved Employees have had
7 to look to sources outside of the wage statements themselves and reconstruct time records to
8 determine whether in fact they were paid correctly and the extent of underpayment, thereby
9 causing them injury. Upon information and belief, Defendants also failed to timely provide wage
10 statements to Plaintiffs and the Aggrieved Employees by waiting too long to do so after the close
11 of the pay period. For these reasons, Defendants also violated Labor Code § 204 by failing to
12 timely pay wages at least twice monthly.

13 43. Defendants also willfully failed to pay Plaintiffs and other Aggrieved Employees
14 who are no longer employed by Defendants all their earned wages, including, but not limited to,
15 overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of
16 discharge, or within seventy-two hours of their leaving Defendants' employ in violation of
17 California Labor Code §§ 201, 202, and 203.

18 44. Defendants were required to provide Plaintiffs and the aggrieved employees certain
19 specific information upon hiring pursuant to California Labor Code § 2810.5. In addition to
20 neglecting to pay wages for all hours worked at the correct rate of pay, the Notice provided to
21 Plaintiffs by Defendants under Labor Code § 2810.5 listed 5TH AXIS as the employer, but failed to
22 list any hourly rate of pay or overtime rate of pay. Labor Code § 2810.5 provides that: "At the
23 time of hiring, an employer shall provide to each employee a written notice, in the language the
24 employer normally uses to communicate employment-related information to the employee,
25 containing" specific required information. Upon information and belief, Defendants failed to
26 provide this information to the Aggrieved Employees as required under Labor Code § 2810.5.

27 45. Labor Code § 1174 requires employers to keep records showing payroll data and
28 the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved

1 Employees proper wages, overtime, premium pay, etc., as addressed above, Defendants failed to
2 maintain proper employment records in accordance with Section 1174. In light of the forgoing,
3 Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5
4 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable
5 California IWC Wage Orders by failing to maintain time records showing when the employee
6 begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7,
7 and total daily hours worked by itemizing in wage statements all deductions from payment of
8 wages and accurately reporting total hours worked by the Aggrieved Employees, and Plaintiffs are
9 entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

10 46. Defendants also violated California Labor Code § 246 by not providing all required
11 paid sick days to Plaintiffs and the aggrieved employees. Labor Code § 246 provides that an
12 Employee who “works in California for the same employer for 30 or more days within a year from
13 the commencement of employment is entitled to paid sick days as specified in this section.”
14 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
15 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
16 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
17 the Class members during the relevant time period, including by failing to provide two work
18 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
19 248.2 and including damages and penalties as these sections are enforced through Labor Code §
20 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid
21 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
22 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
23 (\$4,000), shall be included in the administrative penalty.” Plaintiffs accordingly seek this relief
24 available for Defendants’ failure to provide Employees with all their required and earned sick days
25 and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2,
26 and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1,
27 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and
28 costs pursuant to Labor Code § 2699(g)(1).

1 47. Defendants also failed to reimburse all necessary business expenses the Aggrieved
2 Employees incurred in discharging their job duties at Defendants' behest and failed to provide
3 necessary safety gear, protective clothing, tools, and equipment, in violation of Labor Code §
4 2802, 6401, and 6403. Defendants had a company-wide policy of requiring Aggrieved Employees
5 to utilize their own personal cellular phones and/or cellular data to carry out their job duties, but
6 Defendants failed to reimburse them for the costs of their work-related cellular phone expenses.
7 For example, Plaintiffs were required to use their personal cellular phone to communicate with
8 their supervisors during work shifts. As Plaintiffs' supervisors walked around from building to
9 building and were difficult to locate, and as Plaintiffs were always required to keep their machines
10 running and attended, they were required to speak with their supervisors regarding work related
11 matters. Upon information and belief, other Aggrieved Employees were also required to answer
12 and respond to calls from supervisors using their personal cellular phones. Defendants did not
13 reimburse these necessary business expenses resulting in systematic and ongoing violation of
14 Labor Code § 2802.

15 48. Defendants also required Plaintiffs and the Aggrieved Employees to wear safety
16 gear and protective clothing in order to safely operate their assigned machines, including safety
17 glasses, protective gloves and aprons, and steel-toed boots. Defendants are required to provide
18 such safety equipment and clothing to safeguard employees in their assigned and required work
19 environments under Labor Code §§ 6401 and 6403. As Plaintiffs and the other similarly
20 Aggrieved Employees were instead required to purchase these items on their own without
21 reimbursement, these necessary business expenses must be paid by Defendants, and Defendants
22 are also subject to penalties pursuant to Labor Code § 6423 *et seq.*

23 49. In light of the foregoing, Plaintiffs and the Aggrieved Employees bring this action
24 pursuant to the PAGA for underlying violations of the Labor Code, *inter alia*, Labor Code §§ 201,
25 202, 203, 204, 218, 218.5, 218.6, 221, 222.5, 226, 226.7, 510, 511, 512, 558, 1174, 1185, 1194,
26 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2810.5, 6401, 6403 and 2698 *et seq.*, and California
27 Code of Regulations, Title 8, section 11000 *et seq.* Further, in addition to the penalties available
28 under the PAGA, Plaintiffs are also seeking penalties against Defendants under Labor Code § 558.

Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, and 6423 *et seq.*, Plaintiffs, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties for themselves, all other Aggrieved Employees, and the State of California against Defendants for violations of the California Labor Code, including sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 246, 248.1, 248.2, 248.5, 510, 512(a), 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2810.5, 2698, and 2699 *et seq.* Therefore, Plaintiffs and the Aggrieved Employees seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

PAGA NOTICE AND ALLEGATIONS

50. Plaintiffs brings this PAGA representative action on behalf of themselves and all other similarly situated Aggrieved Employees employed by Defendants during the liability period pursuant to Labor Code § 2698 *et seq.* Plaintiffs and the Employees are aggrieved under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and in Plaintiffs' PAGA Notice Letters to the LWDA and either were or are employed by the alleged violators, Defendants. Upon information and belief, at all times during the liability period, Plaintiffs and the Aggrieved Employees were employees of Defendants subject to the protections of the California Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Orders.

51. In failing to pay Aggrieved Employees their earned wages for all hours worked and overtime, failing to provide lawful meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages timely or twice monthly and upon termination or resignation, along with the other violations addressed herein, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC Wage Orders. Each of these violations gives rise to penalties under the PAGA.

52. As such, Plaintiffs and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code

1 § 2699.5, including under California Labor Code §§ 201, 202, 203, 204, 206.5, 222.5, 226(a),
2 226.7, 246, 248.1, 248.2, 248.5, 510, 512(a), 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
3 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.* Plaintiffs and the Aggrieved Employees
4 seek further statutory and civil penalties as applicable for Defendants' violations, including under
5 sections 201, 202, 203, 204, 206.5, 222.5, 226(a), 226.7, 248.5, 510, 512(a), 516, 1174(d),
6 1182.12, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, and 2698 *et seq.*

7 53. More specifically, after complying with the notice procedures of Labor Code §
8 2699.3, Plaintiffs now asserts, as a representative action on behalf of the California Attorney
9 General and the State of California and the other similarly Aggrieved Employees, PAGA claims
10 for violations of the underlying claims addressed herein and seeking penalties as specified by the
11 applicable corresponding provisions, including as follows:

12 (a) Wage Claims: For failure to provide Plaintiffs and the Aggrieved Employees all
13 earned regular pay and minimum wages for all their regular hours worked and for failure to pay
14 overtime premium wages for overtime hours worked, including under Labor Code §§ 510,
15 1182.12, 1194(a), 1197, 1197.1, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the
16 applicable IWC Wage Order(s) and seeking all civil and statutory penalties available and
17 applicable in connection with the underlying violations for non-payment of wages, including
18 under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for
19 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

20 (b) Meal and Rest Period Claims: For failure to provide Plaintiffs and the Aggrieved
21 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
22 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
23 Labor Code §§ 512, 516, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable
24 IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including
25 under paragraph 20 of the applicable IWC Wage Orders, and civil penalties in connection with
26 violations of Labor Code §§ 226.7, 512, 516, 558(a)(1)-(2), 1198, 1199 and 2699(f)(2), and also
27 for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);
28

1 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
2 provide Plaintiffs and the Aggrieved Employees with accurate, itemized wage statements and
3 failure to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code
4 §§ 226 (multiple sub-sections under 226(a)), 1174, 1197, and 1198.5, and Sections 7(A), 7(B), and
5 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and
6 applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph
7 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor
8 Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to
9 maintain records as required under Labor Code § 226(a), Defendants committed ongoing
10 violations giving rise to civil penalties under Labor Code §226.3, which in addition to other
11 penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty
12 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
13 per employee for each violation in a subsequent citation, ...";

14 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including
15 at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203,
16 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code
17 §§ 201, 202, 203, 210, 256, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the
18 applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code §
19 2699(g)(1);

20 (e) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
21 Defendants' failure to provide Plaintiffs and the Aggrieved Employees with all their required and
22 earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§
23 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code
24 §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for
25 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

26 (f) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses and
27 Provide Required Safety Items: For Defendants' unlawful deductions from wages and for
28 Defendants' failure to reimburse the necessary work related expenses incurred and failure to

1 provide necessary protective equipment and safety clothing under Labor Code §§ 221, 1197,
2 1197.1, 1198, 2802, 6401, 6403, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage
3 Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1,
4 1198, 1199, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and
5 penalties pursuant to Labor Code § 6423 *et seq.* and also attorneys' fees and costs pursuant to
6 Labor Code § 2699(g)(1);

7 (g) Failure Provide Information Upon Hiring Pursuant to Labor Code § 2810.5: For
8 failure to provide information as required under Labor Code § 2810.5, and Labor Code § 2699.5,
9 and seeking penalties available and applicable under Labor Code §§ 2810.5, 1198, and 2699(f)(2),
10 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

11 (h) All Alleged Violations of the IWC Wage Orders: For any above addressed
12 violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor
13 Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under
14 Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys'
15 fees and costs pursuant to Labor Code § 2699(g)(1).

16 54. The penalties will be allocated under Labor Code § 2699(i) as follows: 75% to the
17 Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

18 55. As also addressed above, Plaintiffs also seek on behalf of the Aggrieved Employees
19 the penalties and remedies set forth in Labor Code § 558, which states:

20 (a) Any employer or other person acting on behalf of an employer
21 who violates, or causes to be violated, a section of this chapter or any
22 provision regulating hours and days of work in any order of the Industrial
23 Welfare Commission shall be subject to a civil penalty as follows: (1) For
24 any initial violation, fifty dollars (\$50) for each underpaid employee for
25 each pay period for which the employee was underpaid in addition to an
26 amount sufficient to recover underpaid wages. (2) For each subsequent
violation, one hundred dollars (\$100) for each underpaid employee for
each pay period for which the employee was underpaid in addition to an
amount sufficient to recover underpaid wages. (3) Wages recovered
pursuant to this section shall be paid to the affected employee.

27 (b) If upon inspection or investigation the Labor Commissioner
28 determines that a person had paid or caused to be paid a wage for
overtime work in violation of any provision of this chapter, or any
provision regulating hours and days of work in any order of the Industrial

1 Welfare Commission, the Labor Commissioner may issue a citation. The
2 procedures for issuing, contesting, and enforcing judgments for citations
3 or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

4 (c) The civil penalties provided for in this section are in addition to
5 any other civil or criminal penalty provided by law.

6 56. Plaintiffs have exhausted their administrative remedy by sending a certified letter to
7 the LWDA and Defendants postmarked on **March 2, 2022**, and an amended PAGA Notice Letter
8 on **June 7, 2024**, addressing in detail the specific provisions of the Labor Code Defendants have
9 violated and addressing the facts and legal theories to support the alleged violations (LWDA-CM-
10 871031-22). If the LWDA does not provide notice of its intent to investigate the alleged violations
11 within 65 calendar days of the postmark date of the letter, Plaintiffs will be entitled to file this
12 Complaint following full compliance and exhaustion of the notice requirements under the PAGA
13 and will be entitled to seek civil penalty assessments against Defendants as a Representative of the
14 State of California as hereinafter alleged and in accordance with the law, in addition to costs and
15 reasonable attorneys' fees as provided by the PAGA statute. The concurrently provided PAGA
16 Notice Letter to the LWDA and subsequent amended PAGA Notice Letter are also hereby
17 incorporated into this Complaint as if set forth in full. Plaintiffs allege that the notice period
18 provided by statute will have expired and amendment to this PAGA only Complaint will then be
19 proper pursuant to Labor Code § 2699.3(a)(2)(C).

20 57. This action has been brought and may properly be maintained as a representative
21 action under the provisions of Labor Code § 2698 *et seq.* seeking civil and statutory penalties and
22 wages based, *inter alia*, on the following claims addressed in detail herein:

- 23 a. Defendants failed to pay Employees minimum wages and wages for all hours
24 worked;
- 25 b. Defendants failed to pay Employees overtime as required under Labor Code § 510;
- 26 c. Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage
27 Orders, by failing to provide Employees with requisite meal periods or premium
28 pay in lieu thereof;

- 1 d. Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders,
2 by failing to authorize and permit Employees to take requisite rest breaks or
3 provide premium pay in lieu thereof;
- 4 e. Defendants violated Labor Code § 226(a) by providing Employees with inaccurate
5 wage statements;
- 6 f. Defendants violated Labor Code § 221 by making unauthorized deductions from
7 wages;
- 8 g. Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and
9 compensation due and owing at the time of termination of employment;
- 10 h. Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by
11 failing to maintain accurate records of Aggrieved Employees' earned wages and
12 work periods;
- 13 i. Defendants violated Labor Code § 246, 248.1, and 248.2 by failing to provide sick
14 days and supplemental COVID-19 sick days to Aggrieved Employees;
- 15 j. Defendants violated Labor Code § 2802 by failing to reimburse necessary business
16 expenses incurred by Employees;
- 17 k. Defendants violated Labor Code § 2810.5 by failing to provide new employees
18 with required notice of their employer and rates of pay;
- 19 l. Defendants violated Labor Code §§ 6401 and 6403 by failing to provide Aggrieved
20 Employees with necessary safety and protective gear and clothing; and
- 21 m. Defendants violated Labor Code § 204 by failing to pay Employees all wages
22 earned at least twice monthly.

23 **FIRST CAUSE OF ACTION**

24 **PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM WAGES**

25 **(Against All Defendants)**

26 58. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
27 full herein.

28 59. Defendants failed to pay Aggrieved Employees minimum wages for all hours

1 worked. Defendants had a consistent policy of requiring off the clock work and unlawful
2 rounding and failing to pay Employees for all hours worked. Employees would work hours and
3 not receive wages, including as alleged above in connection with off the clock work, including
4 rounding and all the time required to remain on duty and under Defendants' control during
5 breaks and due to other production demands placed upon them by Defendants' management.
6 Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted
7 and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain
8 job and shift scheduling and time punch rounding requirements on Plaintiffs and the Aggrieved
9 Employees, which resulted in off the clock work and underpayment of all wages owed to
10 Employees over a period of time, while benefiting Defendants.

11 60. Defendants systematically failed to record all hours worked and the Aggrieved
12 Employees were forced to work off-the-clock before and/or after their scheduled shifts to
13 complete their assigned duties, such as conducting shift transition meetings, traveling to and from
14 their workstations, and donning and doffing safety equipment. During the relevant time period,
15 Defendants thus regularly failed to pay minimum wages to Plaintiffs and the Aggrieved
16 Employees, including by requiring systematic off the clock work. Defendants' uniform pattern of
17 unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved
18 Employees as a whole, as a result of implementing a uniform policy and practice that denied
19 accurate compensation to Plaintiffs and the other Aggrieved Employees as to minimum wage pay
20 for all hours worked. As addressed above, Defendants also systematically failed to pay Aggrieved
21 Employees for actual hours worked during unpaid meal periods because these hours were not
22 always correctly recorded.

23 61. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require
24 employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage
25 than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4
26 as "the time during which an employee is subject to the control of an employer, and includes all
27 the time the employee is suffered or permitted to work, whether or not required to do so." Cal.
28 Code. Regs. tit. 8, § 11090(2)(H) (defining "Hours Worked").

1 62. Defendants therefore did not pay minimum wages for all hours worked by the
2 Aggrieved Employees. To the extent that these off-the-clock hours did not qualify for overtime
3 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
4 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

5 63. Pursuant to Labor Code § 2699, Plaintiffs seek all applicable PAGA civil
6 penalties and remedies for each Aggrieved Employee for each pay period in the applicable statute
7 of limitations in which the Aggrieved Employee was not paid for all hours worked for each pay
8 period, plus reasonable attorneys' fees and costs.

9 64. The Private Attorneys General Act of 2004 ("PAGA") provides that:

10 ... an aggrieved employee may recover the civil penalty described in subdivision
11 (I) in a civil action pursuant to the procedures specified in Section 2699.3 filed on
12 behalf of himself or herself and other current or former employees against whom
13 one or more of the alleged violations was committed. Any employee who prevails
14 in any action shall be entitled to an award of reasonable attorney's fees and costs.
Nothing in this part shall operate to limit an employee's right to pursue or recover
other remedies available under state or federal law, either separately or
concurrently with an action taken under this part. (Labor Code § 2699(g)(1)).

15 65. Plaintiffs are an "Aggrieved Employees" under the PAGA, was employed by
16 Defendants during the applicable statutory period and suffered one or more of the California
17 Labor Code violations set forth herein. Accordingly, Plaintiffs seek to recover on behalf of
18 themselves and all other current and former aggrieved non-exempt employees, as defined above,
19 the civil penalties provided by the PAGA, plus reasonable attorneys' fees and costs, after having
20 satisfied the PAGA notice requirements as set forth above.

21 66. Plaintiffs seek to recover civil penalties pursuant to the PAGA that arise from the
22 policies, practices and business acts of Defendants to the extent provided by law as a
23 Representative Action, including reasonable attorneys' fees and costs, and for civil or statutory
24 penalties as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
25 Plaintiffs thus seek penalties against Defendants for failure to provide Plaintiffs and other
26 aggrieved non-exempt employees proper regular pay and minimum wages for regular hours
27 worked and/or overtime premium pay for overtime hours worked during the applicable statutory
28 period pursuant to section 558, and also pursuant to the default PAGA penalties provisions of

1 Labor Code § 2699(f)(2).

2 67. In California, employees must be paid at least the then applicable state minimum
3 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
4 and paragraphs 4(A)-4(C) of the applicable IWC Wage Orders. Section 2(G) of the applicable
5 IWC Wage Orders defines “Hours worked” as “the time during which an employee is subject to
6 the control of an employer, and includes all the time the employee is suffered or permitted to
7 work, whether or not required to do so.”

8 68. Additionally, pursuant to California Labor Code § 204, other applicable laws and
9 regulations, and public policy, an employer must timely pay its employees for all hours worked.
10 Defendants failed to do so.

11 69. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
12 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
13 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”
14 The applicable minimum wage rate fixed by the commission for work during the relevant period
15 is found in the Wage Orders.

16 70. The minimum wage provisions of California Labor Code are enforceable by private
17 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
18 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
19 overtime compensation applicable to the employee is entitled to recover in a civil action the
20 unpaid balance of the full amount of this minimum wage or overtime compensation, including
21 interest thereon, reasonable attorney’s fees and costs of suit.”

22 71. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
23 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
24 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
25 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
26 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
27 the absence of a contractually agreed upon one.

1 72. In committing these violations of the California Labor Code, Defendants
2 inaccurately recorded, or required Plaintiffs and the Aggrieved Employees to input times that did
3 not reflect their actual hours worked, or calculated the correct time worked and consequently
4 underpaid the actual time worked by Plaintiffs and other Aggrieved Employees. Defendants acted
5 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
6 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
7 laws and regulations. As a result of these violations, Defendant also failed to timely pay all wages
8 earned in accordance with California Labor Code § 1194.

9 73. California Labor Code § 1194.2 also provides for the following remedies: “In any
10 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
11 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
12 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”
13 Pursuant to California Labor Code § 1197.1, Plaintiffs and Aggrieved Employees are entitled to
14 recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages,
15 and \$250.00 for each subsequent failure to pay each employee minimum wages.

16 74. Labor Code § 1198 also requires that: “The maximum hours of work and the
17 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
18 standard conditions of labor for employees. The employment of any employee for longer hours
19 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
20 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
21 IWC Wage Order provisions, and Labor Code § 2699.5 also lists Section 1198 as one of the
22 provisions for which a representative PAGA action may be commenced under Labor Code §
23 2699.3.

24 75. Additionally, Labor Code § 1199 provides that: “Every employer or other person
25 acting either individually or as an officer, agent, or employee of another person is guilty of a
26 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100)..., who does
27 any of the following: (a) Requires or causes any employee to work for longer hours than those
28

1 fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to
2 be paid to any employee a wage less than the minimum fixed by an order of the commission....”

3 76. Section 20 of IWC Wage Order No. 1 addresses further penalties as follows: “(A)
4 In addition to any other civil penalties provided by law, any employer or any other person acting
5 on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall
6 be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each underpaid employee for
7 each pay period during which the employee was underpaid in addition to the amount which is
8 sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for each underpaid
9 employee for each pay period during which the employee was underpaid in addition to an amount
10 which is sufficient to recover unpaid wages. (3) The affected employee shall receive payment of
11 all wages recovered.”

12 77. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
13 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
14 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
15 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
16 employee per pay period for the initial violation and two hundred dollars (\$200) for each
17 aggrieved employee per pay period for each subsequent violation.”

18 78. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
19 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
20 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
21 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
22 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204,... 221,
23 ...510, 512,... 1194, 1197, 1197.1 and 1198...1199”, and these provisions of the Code allow for
24 recovery of civil penalties pursuant to the PAGA in this action. Plaintiffs have fully complied with
25 procedures specified in Labor Code § 2699.3.

26 79. Defendants’ conduct, as alleged herein, violates the regulations because Defendants
27 failed to properly compensate Plaintiffs and other aggrieved non-exempt employees’ applicable
28 minimum wages and contractually agreed upon wages for all hours they were required to work

1 and remain under Defendants' control.

2 80. As such, Defendants are liable for PAGA penalties resulting from their failure to
3 provide Plaintiffs and the other Aggrieved Employees minimum wages and all wages owed for all
4 hours worked. Accordingly, Plaintiffs are entitled to recover, and hereby seek through this
5 representative action, all civil and statutory penalties authorized for violations of California Labor
6 Code §§ 510, 1182.12, 1194, 1197, 1197.1, 1198, 221 and 204 and Sections 2(K), 4, and 20 of the
7 applicable IWC Wage Order(s), and Plaintiffs seek all civil and statutory penalties available and
8 applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also
9 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

10 **SECOND CAUSE OF ACTION**

11 **PENALTIES UNDER THE PAGA FOR FAILURE TO PAY WAGES AND OVERTIME**

12 **UNDER LABOR CODE § 510**

13 **(Against All Defendants)**

14 81. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
15 full herein.

16 82. California Labor Code § 1194 provides that "any employee receiving less than the
17 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
18 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
19 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
20 may be maintained directly against the employer in an employee's name without first filing a
21 claim with the Division of Labor Standards and Enforcement.

22 83. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
23 Labor Code § 510 (and paragraphs 3(A) and 4(A)-4(B) of the relevant orders of the Industrial
24 Welfare Commission) by failing to pay Employees for all their hours worked, including at: (a)
25 time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday
26 or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day
27 of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of
28 twelve hours in any one (1) day or for hours worked in excess of eight hours on any seventh day

1 of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all
2 hours worked, including by requiring off the clock work as addressed above and by unlawfully
3 rounding down and under-reporting actual hours worked.

4 84. Similar to Labor Code § 510, Section 3(A) of the applicable IWC Wage Orders
5 instructs that: “(A) Daily Overtime-General Provisions (1) The following overtime provisions are
6 applicable to employees 18 years of age or over... Such employees shall not be employed more
7 than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives
8 one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40
9 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond
10 eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided
11 the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times
12 the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and
13 including twelve (12) hours in any workday,...”

14 85. Defendants had a consistent policy of not paying Employees wages for all hours
15 worked, including hours at their required regular, overtime, and double-time rates. Defendants,
16 and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified
17 certain employees’ hours, including Plaintiffs’, or required Plaintiffs and the Aggrieved
18 Employees to do so, or otherwise caused them to work off the clock to avoid paying Plaintiffs and
19 the Aggrieved Employees all earned and owed straight time and overtime wages and other
20 benefits, in violation of the California Labor Code, the California Code of Regulations and the
21 IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.
22 Defendants have also violated these provisions by requiring Plaintiffs and other similarly situated
23 non-exempt employees to work through meal periods when they were required to be clocked out
24 or to otherwise work off the clock to complete their daily job duties or to attend and participate in
25 company required activities. As further detailed above, Defendants also discouraged Aggrieved
26 Employees from recording hours outside their scheduled shifts in order to limit the amount of
27 overtime they could accrue and further limited payments for all hours worked due to budget
28 constraints or other corporate requirements. The difficult to attain production goals Defendants

1 implemented required employees to work off the clock during times when they should have been
2 accruing overtime. Defendants also underpaid and miscalculated the overtime they paid by failing
3 to include all forms of remuneration, including bonuses or differentials, in the regular rate used to
4 calculate and pay overtime.

5 86. Therefore, Aggrieved Employees were not properly compensated, nor were they
6 paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in
7 a given week. Based on information and belief, Defendants did not make available to Employees a
8 reasonable protocol for correcting time records when Employees worked overtime hours or to fix
9 incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's
10 detriment. Defendants have also violated these provisions by requiring Plaintiffs and other
11 similarly situated Aggrieved Employees to work through meal periods when they were required to
12 be clocked out or to otherwise work off the clock to complete their daily job duties.

13 87. Defendants' failure to pay Plaintiffs and the Aggrieved Employees the unpaid
14 balance of regular wages owed and overtime compensation for all hours worked, as required by
15 California law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the
16 applicable IWC Wage Orders, and is therefore unlawful.

17 88. Pursuant to Labor Code § 2699, Plaintiffs seek all applicable PAGA civil
18 penalties and remedies for each Aggrieved Employee for each pay period in the applicable statute
19 of limitations in which the Aggrieved Employee was not paid at the correct overtime rate for all
20 hours worked for each pay period, plus reasonable attorneys' fees and costs. Plaintiffs are entitled
21 to bring this claim pursuant to Labor Code § 2699(g)(1) and after having satisfied the PAGA
22 notice requirements, as addressed above. Plaintiffs further seek civil penalties pursuant to Labor
23 Code 558(a)(1)-(2) and Labor Code 2699(f)(2), as detailed above, for Defendants' failure to pay
24 all overtime wages in violation of the underlying Labor Code sections addressed herein.

25 89. Defendants' failure to pay compensation in a timely fashion also constituted a
26 violation of California Labor Code § 204, which requires that all wages shall be paid
27 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
28 violation of that provision of the California Labor Code, Defendants have failed to pay all wages

1 and overtime compensation earned by Employees. Each such failure to make a timely payment of
2 compensation to Employees constitutes a separate violation of California Labor Code § 204.

3 90. As a result of these violations, Defendant also failed to timely pay all wages
4 earned in accordance with California Labor Code § 1194. California Labor Code § 1194.2 also
5 provides for the following remedies: “In any action under Section 1194 . . . to recover wages
6 because of the payment of a wage less than the minimum wages fixed by an order of the
7 commission, an employee shall be entitled to recover liquidated damages in an amount equal to
8 the wages unlawfully unpaid and interest thereon.”

9 91. Labor Code § 1198 also requires that: “The maximum hours of work and the
10 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
11 standard conditions of labor for employees. The employment of any employee for longer hours
12 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
13 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
14 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
15 for which a representative PAGA action may be commenced under Labor Code § 2699.3. Section
16 20 of IWC Wage Orders addresses further penalties derived from Section 1198 violations.

17 92. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
18 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
19 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
20 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
21 employee per pay period for the initial violation and two hundred dollars (\$200) for each
22 aggrieved employee per pay period for each subsequent violation.”

23 93. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
24 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
25 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
26 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
27 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204, ...510,
28 512,... 1194, 1197, 1197.1 and 1198...1199” among the provisions of the Code that allow for

1 recovery of civil penalties pursuant to the PAGA. As a direct and proximate result of Defendants'
2 unlawful acts, as alleged in detail herein, Plaintiffs and other aggrieved non-exempt employees
3 have been deprived, and continue to be deprived, of overtime wages owed for all hours they
4 worked. Plaintiffs have fully complied with procedures specified in Labor Code § 2699.3.

5 94. As such, Defendants are liable for PAGA penalties resulting from their failure to
6 timely provide Plaintiffs and the other Aggrieved Employees overtime and premium wages for all
7 hours worked. Accordingly, Plaintiffs are entitled to recover, and hereby seek through this
8 representative action, all civil and statutory penalties authorized for violations of California Labor
9 Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20 of the applicable
10 IWC Wage Order(s), and Plaintiffs seek all civil and statutory penalties available and applicable
11 under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys'
12 fees and costs pursuant to Labor Code § 2699(g)(1).

13 **THIRD CAUSE OF ACTION**

14 **PENALTIES UNDER THE PAGA FOR MEAL-PERIOD LIABILITY**

15 **UNDER LABOR CODE §§ 226.7, 512**

16 **(Against All Defendants)**

17 95. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
18 full herein.

19 96. Employees regularly worked shifts greater than five hours and in some instances,
20 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
21 Wage Orders, an employer may not employ someone for a shift of more than five hours without
22 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
23 ten hours without providing him or her with a second meal period of not less than thirty minutes.
24 Section 11(A)-(E) of the applicable Wage Orders provides similar requirements to those of Labor
25 Code § 512,

26 97. Defendants failed to provide Employees with meal periods as required under the
27 Labor Code and paragraph 11 of the applicable IWC Wage Orders. Employees were often
28 required to work or to otherwise remain under Defendants' control during meal periods, or

1 Defendants provided them after Employees worked beyond the fifth hour of their shifts or
2 Employees otherwise had them shortened and interrupted by work demands and requirements to
3 remain under Defendants' control. Furthermore, upon information and belief, on the occasions
4 when Employees worked more than ten hours in a given shift, they did so without receiving a
5 second uninterrupted thirty-minute meal period as required by law.

6 98. As a result of Defendants' timekeeping system and rounding, Plaintiffs and other
7 Aggrieved Employees were prevented from accurately recording meal period start and stop times
8 on days when they had meal periods that were cut short and/or interrupted or were provided late.
9 Additionally, as stated, on information and belief, Defendants' management would adjust
10 Aggrieved Employees' time records and/or pressured employees to clock out for meal periods to
11 reflect compliant meal periods, regardless of whether they had received a compliant meal period
12 or not, in order to conform time punch records to scheduled shift times. Defendants thus failed to
13 provide Plaintiffs and the Aggrieved Employees with meal periods, as required by the Labor Code
14 and paragraph 11 of the applicable IWC Wage Orders, including by not providing them with the
15 opportunity to take meal breaks, by providing them late or for less than thirty minutes, or by
16 requiring them to perform work during breaks.

17 99. Moreover, Defendants failed to compensate Employees for each meal period not
18 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the
19 applicable IWC Wage Orders, which provides that, if an employer fails to provide an employee a
20 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
21 pay at the employee's regular rate of compensation for each workday that the meal period is not
22 provided. Defendants failed to compensate Employees for each meal period not provided or
23 inadequately provided, as required under Labor Code § 226.7.

24 100. Plaintiffs seek civil penalties against Defendants for failure to provide Plaintiffs
25 and other aggrieved non-exempt employees lawful off-duty unpaid meal periods. Pursuant to
26 Labor Code § 2699, Plaintiffs seek all applicable PAGA civil penalties and remedies for each
27 Aggrieved Employee for each pay period in the applicable statute of limitations in which the
28 Aggrieved Employee was not provided with a meal period, plus reasonable attorneys' fees and

1 costs. Plaintiffs are entitled to bring this claim pursuant to Labor Code § 2699(g)(1) and after
2 having satisfied the PAGA notice requirements, as addressed above. Plaintiffs further seek civil
3 penalties pursuant to Labor Code §§ 558(a)(1)-(2) and 2699(f)(2), as detailed above, for
4 Defendants' failure to provide all required meal periods in violation of the underlying Labor Code
5 sections addressed herein.

6 101. Premium pay for denied lawful meal and rest periods is considered a "wage" rather
7 than a penalty. *See Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114. Plaintiffs
8 therefore seek to recover civil penalties pursuant to the PAGA that arise from the policies,
9 practices, and business acts of Defendants to the extent provided by law as a Representative
10 Action, including reasonable attorneys' fees and costs, and civil penalties for the underpayment of
11 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
12 Aggrieved employees may recover penalties for denied meal periods under the PAGA, as the civil
13 penalty under California Labor Code § 558 applies to any provision regulating hours and days of
14 work in any Wage Order, and Plaintiffs have fully complied with procedures specified in Labor
15 Code § 2699.3.

16 102. Labor Code § 2699(f)(2) states: "For all provisions of this code except those
17 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
18 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
19 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
20 employee per pay period for the initial violation and two hundred dollars (\$200) for each
21 aggrieved employee per pay period for each subsequent violation."

22 103. Labor Code § 2699.3 allows "(a) A civil action by an aggrieved employee pursuant
23 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
24 2699.5" to commence upon satisfaction of its written notice requirements. Additionally, Labor
25 Code § 2699.5 provides, in pertinent part that "[t]he provisions of subdivision (a) of Section
26 2699.3 apply to any alleged violation of the following provisions: "[Labor Code §§] 226.7,
27 ...512,...558,... and 1198" among the provisions of the Code that allow for recovery of civil
28 penalties pursuant to the PAGA.

104. Defendants' conduct, as alleged herein, violates the aforementioned regulations because Defendants failed to properly provide Plaintiffs and other aggrieved non-exempt employees with lawful uninterrupted off-duty meal periods throughout the applicable statutory period. Defendants also systematically denied Plaintiffs and other Aggrieved Employees proper premium pay at the rate of one hour of pay at their regular pay rates for each work shift they were denied an unpaid, off-duty 30-minute meal period.

105. As such, Defendants are liable for PAGA penalties resulting from their failure to provide Plaintiffs and other aggrieved non-exempt employees lawful meal periods and the corresponding meal period premium pay. Accordingly, Plaintiffs are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 226.7, 512, 516, 558, and 1198, and Section 11(A)-(E) of the applicable IWC Wage Orders, and Plaintiffs seek all civil and statutory penalties available and applicable under Labor Code §§ 226.7, 512, and 558, including sections 558(a)(1)-(2), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

FOURTH CAUSE OF ACTION

PENALTIES UNDER THE PAGA FOR REST-BREAK LIABILITY

UNDER LABOR CODE § 226.7, WAGE ORDERS

(Against All Defendants)

106. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

107. Section 12(A)-(B) of the applicable IWC Wage Orders instruct that: "(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this

1 order, the employer shall pay the employee one hour of pay at the employee's regular rate of
2 compensation for each work day that the rest period is not provided." Labor Code § 226.7 further
3 instructs that: "An employer shall not require an employee to work during a meal or rest or
4 recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or
5 order of the Industrial Welfare Commission,..."

6 108. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
7 provide that employers must authorize and permit all employees to take rest periods at the rate of
8 ten minutes net rest time per four work hours. Defendants, and each of them, have intentionally
9 and improperly denied rest periods to Plaintiffs and the Aggrieved Employees in violation of
10 Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

11 109. Employees consistently worked consecutive four hour shifts and were generally
12 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
13 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
14 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
15 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
16 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often
17 required to work or to otherwise remain under Defendants' control during rest periods, including
18 by being required to perform work requirements and keep up with production demands, and had
19 breaks provided untimely as a result of the above described off the clock work. Plaintiffs and the
20 Aggrieved Employees were also not permitted to leave their work premises during rest breaks, as
21 addressed above.

22 110. Defendants failed to compensate Employees for each rest period not provided or
23 inadequately provided, as required under Labor Code § 226.7 and paragraph 12 of the applicable
24 IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period
25 in accordance with this section, the employer shall pay the employee one hour of pay at the
26 employee's regular rate of compensation for each workday that the meal period is not provided.
27 Defendants failed to compensate Employees for each meal period not provided or inadequately
28 provided, as required under Labor Code § 226.7.

111. Plaintiffs seek civil penalties against Defendants for failure to provide Plaintiffs and other aggrieved non-exempt employees lawful off-duty rest periods. Pursuant to Labor Code § 2699, Plaintiffs seek all applicable PAGA civil penalties and remedies for each Aggrieved Employee for each pay period in the applicable statute of limitations in which the Aggrieved Employee was not provided with a rest break, plus reasonable attorneys' fees and costs. Plaintiffs are entitled to bring this claim pursuant to Labor Code § 2699(g)(1) and after having satisfied the PAGA notice requirements, as addressed above. Plaintiffs further seek civil penalties pursuant to Labor Code 558(a)(1)-(2) and Labor Code 2699(f)(2), as detailed above, for Defendants' failure to provide required rest periods in violation of the underlying Labor Code sections addressed herein.

112. Plaintiffs therefore seek to recover civil penalties pursuant to the PAGA that arise from the policies, practices, and business acts of Defendants to the extent provided by law as a Representative Action, including reasonable attorneys' fees and costs, and civil penalties for the underpayment of wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute. Aggrieved employees may recover penalties for denied meal periods under the PAGA, as the civil penalty under California Labor Code § 558 applies to any provision regulating hours and days of work in any Order.

113. Labor Code § 2699(f)(2) states: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one 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."

114. Labor Code § 2699.3 allows "(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5" to commence upon satisfaction of its written notice requirements. Additionally, Labor Code § 2699.5 provides, in pertinent part that "[t]he provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: "[Labor Code §§] 226.7, ...512,...558,... and 1198" among the provisions of the Code that allow for recovery of civil

1 penalties pursuant to the PAGA. Plaintiffs have fully complied with procedures specified in Labor
2 Code § 2699.3.

3 115. Defendants' conduct, as alleged herein, violates the aforementioned regulations
4 because Defendants failed to properly provide Plaintiffs and other aggrieved non-exempt
5 employees with lawful uninterrupted off-duty rest breaks throughout the applicable statutory
6 period. Defendants also systematically denied Plaintiffs and other Aggrieved Employees proper
7 premium pay at the rate of one hour of pay at their regular pay rates for each work shift they were
8 denied an off-duty rest period.

9 116. As such, Defendants are liable for PAGA penalties resulting from their failure to
10 provide Plaintiffs and other aggrieved non-exempt employees lawful rest periods and the
11 corresponding rest period premium pay. Accordingly, Plaintiffs are entitled to recover, and hereby
12 seek through this Representative Action, all civil and statutory penalties authorized for violations
13 of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 12(A)-(B) of the applicable
14 IWC Wage Orders, and Plaintiffs seek all civil and statutory penalties available and applicable
15 under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(2), and 2699(f)(2), and also
16 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

17 **FIFTH CAUSE OF ACTION**

18 **PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE**
19 **ITEMIZED WAGE STATEMENTS UNDER LABOR CODE § 226(a) AND KEEP**
20 **ACCURATE PAYROLL RECORDS UNDER LABOR CODE § 1174**

21 **(Against All Defendants)**

22 117. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
23 full herein.

24 118. Plaintiffs seek civil penalties against Defendants for failure to provide Plaintiffs
25 and the other Aggrieved Employees accurate itemized wage statements during the applicable
26 statutory period. During the relevant time period, Defendants has knowingly and intentionally
27 provided Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For
28 example, Defendants issued uniform wage statements to Plaintiffs and other Aggrieved

1 Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
2 address of the legal entity that is the employer; and all applicable hourly rates in effect during the
3 pay period, including overtime rates of pay, and the corresponding number of hours worked at
4 each hourly rate. Specifically, Defendants violated Labor Code sections 226(a)(1), 226(a)(2),
5 226(a)(5), 226(a)(8), and 226(a)(9).

6 119. California Labor Code § 226(a) requires an employer to furnish each of his or her
7 employees with an accurate, itemized statement in writing showing the gross and net earnings,
8 total hours worked, and the corresponding number of hours worked at each hourly rate; these
9 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
10 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
11 statements may be given to the employee separately from the payment of wages; in either case the
12 employer must give the employee these statements twice a month or each time wages are paid.

13 120. Defendants failed to provide Plaintiffs and the similarly situated Aggrieved
14 Employees with accurate itemized wage statements in writing, as required by the Labor Code and
15 paragraphs 7(A)-(B) of the applicable IWC Wage Orders. Specifically, the wage statements given
16 to Employees by Defendants failed to accurately account for wages, overtime, and premium pay
17 for deficient meal periods and rest breaks, and rounded timekeeping entries to the detriment of the
18 Aggrieved Employees, all of which Defendants knew or reasonably should have known were
19 owed to Employees, as alleged above.

20 121. Paragraph 7(C) of the applicable IWC Wage Orders further requires that: "All
21 required records shall be in the English language and in ink or other indelible form, properly
22 dated, showing month, day, and year and shall be kept on file by the employer for at least three (3)
23 years at the place of employment or at a central location within the State of California. An
24 employee's records shall be available for inspection by the employee upon reasonable request."

25 122. Labor Code § 226.3 also instructs that: "Any employer who violates subdivision
26 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
27 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
28 employee for each violation in a subsequent citation, for which the employer fails to provide the

1 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
2 Section 226. The civil penalties provided for in this section are in addition to any other penalty
3 provided by law.”

4 123. Throughout the liability period, Defendants intentionally failed to furnish to
5 Plaintiffs and the Aggrieved Employees, upon each payment of wages, itemized statements
6 accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the
7 number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all
8 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
9 paid, (7) the name of the employee and only the last four digits of his or her social security
10 number or an employee identification number other than a social security number, (8) the name
11 and address of the legal entity that is the employer and (9) all applicable hourly rates in effect
12 during the pay period and the corresponding number of hours worked at each hourly rate by the
13 employee pursuant to Labor Code § 226, amongst other statutory requirements, and paragraph 7 of
14 the applicable IWC Wage Orders. Defendants knowingly and intentionally failed to provide
15 Plaintiffs and the Aggrieved Employees with such timely and accurate wage and hour statements.

16 124. As addressed in detail above, Defendants unlawfully rounded and did not record
17 the time Aggrieved Employees spent working off-the-clock and during deducted time from their
18 meal periods that were missed and/or interrupted (and therefore time for which they should have
19 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
20 Aggrieved Employees, in compliance with Labor Code section 226(a)(1) and 226(a)(5),
21 respectively. For the same reason, Defendants failed to accurately list the total number of the
22 hours worked by Aggrieved Employees, in violation of Labor Code section 226(a)(2), and failed
23 to list the applicable hourly rates of pay in effect during the pay period and the corresponding
24 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).
25 Furthermore, because Defendants did not calculate Aggrieved Employees’ regular rate of pay
26 correctly for purposes of paying overtime wages, Defendants did not list the correct amount of
27 gross wages earned by Aggrieved Employees in compliance with section 226(a)(1) and did not
28 list the correct amount of net wages earned by other Aggrieved Employees in violation of section

226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premiums, in violation of section 226(a)(9).

125. Because Defendants did not calculate Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages, Defendants did not list the correct amount of gross wages earned by Aggrieved Employees in compliance with Labor Code section 226(a)(1) and did not list the correct amount of net wages earned by other Aggrieved Employees in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premiums, in violation of section 226(a)(9).

126. Defendants issued uniform wage statements to Plaintiffs and other Aggrieved Employees that failed to correctly list the address of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. On the wage statements issued to Plaintiffs, and upon information and belief the Aggrieved Employees, Defendants did not list the address of the employer and only listed the company name.

127. Plaintiffs and the Aggrieved Employees suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements as required by law and are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the Defendants have failed to provide a wage statement, failed to provide accurate and complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiffs and Aggrieved Employees cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9)

1 of subdivision (a), (ii) Which deductions the employer made from gross wages to determine the
2 net wages paid to the employee during the pay period, (iii) The name and address of the employer
3 and, (iv) The name of the employee and only the last four digits of his or her social security
4 number or an employee identification number other than a social security number.

5 128. For purposes of Labor Code § 226(e) “promptly and easily determine” means a
6 reasonable person [i.e. an objective standard] would be able to readily ascertain the information
7 without reference to other documents or information. Because Defendants failed to provide the
8 correct net and gross wages earned, applicable rates of pay, and number of total hours worked on
9 wage statements, Aggrieved Employees have been prevented from verifying, solely from
10 information on the wage statements themselves, that they were paid correctly and in full. Instead,
11 Mr. Gallardo and other Aggrieved Employees have had to look to sources outside of the wage
12 statements themselves and reconstruct time records to determine whether in fact they were paid
13 correctly and the extent of underpayment, thereby causing them injury.

14 129. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
15 § 226(a), and paragraph 7 of the applicable IWC Wage Orders, Employees suffered injuries,
16 including among other things confusion over whether they received all wages owed them, the
17 difficulty and expense involved in reconstructing pay records, and forcing them to make
18 mathematical computations to analyze whether the wages paid in fact compensated them correctly
19 for all hours worked. Labor Code § 226(e)(1) further instructs that: “An employee suffering injury
20 as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
21 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
22 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
23 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
24 is entitled to an award of costs and reasonable attorney’s fees.” However, for PAGA claims arising
25 from violations of Section 226(a), Plaintiffs need not establish injury or that Defendants acted
26 knowingly and intentionally in issuing inaccurate wage statements.

27 130. Plaintiffs therefore seek civil penalties under the PAGA against Defendants for
28 providing inaccurate wage statements and also for failure to maintain accurate Employee records

1 during the applicable statutory period.

2 131. To this end, Labor Code § 1174 provides that: “Every person employing labor in
3 this state shall:....(c) Keep a record showing the names and addresses of all employees employed
4 and the ages of all minors. (d) Keep, at a central location in the state or at the plants or
5 establishments at which employees are employed, payroll records showing the hours worked daily
6 by and the wages paid to, and the number of piece-rate units earned by and any applicable piece
7 rate paid to, employees employed at the respective plants or establishments. These records shall be
8 kept in accordance with rules established for this purpose by the commission, but in any case shall
9 be kept on file for not less than three years...”

10 132. Plaintiffs seek to recover civil penalties pursuant to the PAGA that arise from the
11 policies, practices and business acts of Defendants to the extent provided by law as a
12 Representative Action, including reasonable attorneys’ fees and costs. As alleged in more detail
13 above, Defendants violated the above statutes by failing to maintain accurate payroll records
14 showing the hours worked daily by, and the wages paid to, Plaintiffs and other aggrieved non-
15 exempt employees. Defendants’ payroll records pertaining to Plaintiffs and other aggrieved non-
16 exempt employees, and in turn the wage statements issued to them, fail to accurately reflect all
17 regular and overtime hours worked, overtime hourly rates, actual gross wages and net wages
18 earned, meal periods, and premium wages owed for denied lawful meal and rest periods.

19 133. Labor Code § 2699(f)(2) states that: “For all provisions of this code except those
20 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
21 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
22 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
23 employee per pay period for the initial violation and two hundred dollars (\$200) for each
24 aggrieved employee per pay period for each subsequent violation.”

25 134. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
26 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
27 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
28 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section

1 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 226,...
2 subdivisions (c) and (d) of Section 1174,... 1198,...1199,...” among the provisions of the Code
3 that allow for recovery of civil penalties pursuant to the PAGA.

4 135. Labor Code § 1198 also requires that: “The maximum hours of work and the
5 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
6 standard conditions of labor for employees. The employment of any employee for longer hours
7 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
8 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
9 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
10 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

11 136. As such, Defendants are liable for PAGA penalties resulting from their failure to
12 provide accurate itemized wage statements to Plaintiffs and the Aggrieved Employees and failure
13 to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§
14 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage
15 Order(s), and Plaintiffs seek all civil and statutory penalties available and applicable under Labor
16 Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for attorneys’ fees and costs pursuant
17 to Labor Code § 2699(g)(1).

18 **SIXTH CAUSE OF ACTION**

19 **PENALTIES UNDER THE PAGA FOR VIOLATION OF LABOR CODE § 204**

20 **(Against All Defendants)**

21 137. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
22 full herein.

23 138. California Labor Code section 204 requires that all wages earned by any person in
24 any employment between the 1st and the 15th days, inclusive, of any calendar month, other than
25 those wages due upon termination of an employee, are due and payable between the 16th and the
26 26th day of the month during which the labor was performed, and that all wages earned by any
27 person in any employment between the 16th and the last day, inclusive, of any calendar month,
28 other than those wages due upon termination of an employee, are due and payable between the 1st

1 and the 10th day of the following month. California Labor Code section 204 also requires that all
2 wages earned for labor in excess of the normal work period shall be paid no later than the payday
3 for the next regular payroll period. Alternatively, California Labor Code section 204 provides that
4 the requirements of this section are deemed satisfied by the payment of wages for weekly,
5 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
6 following the close of the payroll period.

7 139. Therefore, pursuant to California Labor Code § 204, other applicable laws and
8 regulations, and public policy, an employer must timely pay its employees for all hours worked
9 and do so at least twice monthly. Defendants failed to do so. These failure to timely pay wages
10 violations give rise to PAGA penalties, and Labor Code § 204 is an enumerated provision under
11 Labor Code § 2699.5. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
12 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
13 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
14 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
15 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204,... 221,
16 ...510, 512,... 1194, 1197, 1197.1 and 1198...1199,” and these provisions of the Code allow for
17 recovery of civil penalties pursuant to the PAGA in this action.

18 140. Defendants unlawfully failed to timely pay all wages owed to Plaintiffs and the
19 Aggrieved Employees as addressed above. As such, Defendants are liable for PAGA penalties
20 resulting from these violations and Plaintiffs are entitled to recover, and hereby seek through this
21 representative action, all civil and statutory penalties authorized for violations of California Labor
22 Code §§ 204, 1197, 1197.1, 1198 and Sections 2(K), 4, and 20 of the applicable IWC Wage
23 Order(s), and Plaintiffs seek all civil and statutory penalties available and applicable under Labor
24 Code §§ 204, 1197, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys’ fees and costs
25 pursuant to Labor Code § 2699(g)(1). Plaintiffs have fully complied with procedures specified in
26 Labor Code § 2699.3.

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SEVENTH CAUSE OF ACTION
PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY ALL WAGES
OWED IN VIOLATION OF LABOR CODE §§ 201, 202, 203
(Against All Defendants)

141. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

142. As addressed in the preceding paragraphs, in violation of Labor Code § 204, Defendants maintained a consistently applied policy and practice of not paying all wages earned between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. Defendants similarly failed to pay all wages earned by not more than seven calendar days following the close of the payroll period.

143. As detailed above, all wages due and owing to Plaintiffs and the Aggrieved Employees, including as required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each employee in each pay period that he or she was not provided with a meal period or rest period or paid straight or overtime wages to which he or she was entitled.

144. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiffs and the Aggrieved Employees may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

145. Additionally, Plaintiffs and numerous Aggrieved Employees are no longer employed by Defendants; they either quit Defendants’ employ or were fired therefrom during the relevant liability period. Plaintiffs seek civil penalties against Defendants for their failure to timely

1 pay Plaintiffs and the Aggrieved Employee all wages owed during the applicable statutory period.
2 Defendants failed to pay these Employees all wages due and certain at the time of termination or
3 within seventy-two (72) hours of resignation. The wages withheld from these Employees by
4 Defendants remained due and owing for more than thirty (30) days from the date of separation
5 from employment.

6 146. Under Labor Code § 202, where an employee voluntarily quits his or her
7 employment without advance notice, all commission wages that can be reasonably calculated at
8 the time must be paid to the employee within 72 hours of termination of the employment
9 relationship.

10 147. Labor Code § 203 further provides: “(a) If an employer willfully fails to pay,
11 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
12 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
13 continue as a penalty from the due date thereof at the same rate until paid or until an action
14 therefor is commenced; but the wages shall not continue for more than 30 days....”

15 148. Under Labor Code § 2926, “[a]n employee who is not employed for a specified
16 term and who is dismissed by his employer is entitled to compensation for services rendered up to
17 the time of such dismissal.” Also, under Labor Code § 2927, “[a]n employee who is not employed
18 for a specified term and who quits the service of his employer is entitled to compensation for
19 services rendered up to the time of such quitting.”

20 149. Defendants failed to pay Plaintiffs and the Aggrieved Employees without
21 abatement, all wages as defined by applicable California law. Among other things, these
22 Employees were not paid all regular and overtime wages, including by Defendants failing to pay
23 for all hours worked or requiring off the clock work and failing to pay premium wages owed for
24 unprovided meal periods and rest periods, as further detailed in this Complaint and in Plaintiffs’
25 PAGA Notice Letters to the LWDA at Exhibits A and B. Defendants’ failure to pay said wages
26 within the required time was willful within the meaning of Labor Code § 203.

27 150. All wages due and owing to Plaintiffs and the Aggrieved Employees, including as
28 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,

1 wages required by Labor Code § 1194 and other sections became due and payable to each
2 employee in each pay period that he or she was not provided with a meal period or rest period or
3 paid straight or overtime wages to which he or she was entitled.

4 151. Under Labor Code § 210, “(a) In addition to, and entirely independent and apart
5 from, any other penalty provided in this article, every person who fails to pay the wages of each
6 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be
7 subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
8 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
9 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
10 amount unlawfully withheld.”

11 152. Similarly, Section 20 of IWC Wage Order No. 1 addresses further penalties as
12 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
13 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
14 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
15 underpaid employee for each pay period during which the employee was underpaid in addition to
16 the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for
17 each underpaid employee for each pay period during which the employee was underpaid in
18 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
19 receive payment of all wages recovered.”

20 153. Plaintiffs seek to recover civil penalties pursuant to the PAGA that arise from the
21 policies, practices and business acts of Defendants to the extent provided by law as a
22 Representative Action, including reasonable attorneys’ fees and costs, and as permitted by Labor
23 Code § 558, as a separate civil penalty provided by the PAGA statute.

24 154. Defendants violated the above statutes by failing to promptly pay Plaintiffs and
25 other aggrieved non-exempt employees all earned wages due each and every pay period, as well as
26 immediately upon termination and/or within 72 hours upon resignation.

27 155. During the applicable statutory period, Defendants violated, and continue to
28 violate, California Labor Code § 204 and Section 20 of IWC Wage Orders by failing to

1 compensate Plaintiffs and other aggrieved hourly employee overtime premium wages for overtime
2 hours worked, premium pay for denied off-duty meal and rest periods (wages), and other wages
3 due to Plaintiffs and other Aggrieved Employees each pay period, as alleged in more detail herein.

4 156. Further, Defendants violated, and continue to violate, California Labor Code §§
5 201-204, 2926, and 2927 by failing to compensate employees, including Plaintiffs and other
6 Aggrieved Employees no longer working for Defendants, for services rendered up to the time of
7 dismissal or quitting, and for failing to timely do so.

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

14 158. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
15 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
16 2699.5” to commence upon satisfaction of its written notice requirements. Plaintiffs have fully
17 complied with procedures specified in Labor Code § 2699.3. Additionally, Labor Code § 2699.5
18 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section 2699.3 apply to any
19 alleged violation of the following provisions: “[Labor Code §§] 201,... 202, 203, ...204,...
20 558,...1198,...” among the provisions of the Code that allow for recovery of civil or statutory
21 penalties pursuant to the PAGA.

22 159. Defendants are liable for PAGA penalties resulting from their failure to timely pay
23 all wages owed to Plaintiffs and other Aggrieved Employees at the time of their termination of
24 separation from employment, and failure to timely pay all wages owed twice monthly.
25 Accordingly, Plaintiffs are entitled to recover, and hereby seek through this Representative Action,
26 all civil and statutory penalties authorized for violations under Labor Code §§ 201, 201, 203, 204,
27 1197.5, 1198, 2926, and 2927, and Plaintiffs seek all civil penalties available and applicable under
28 Labor Code §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable

1 IWC Wage Order(s), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

2 **EIGHTH CAUSE OF ACTION**

3 **PENALTIES UNDER THE PAGA AND LABOR CODE §§ 246, 248.1, and 248.2 FOR**
4 **FAILURE TO PROVIDE SICK DAYS AND COVID-19 SUPPLEMENTAL SICK LEAVE**
5 **(Against All Defendants)**

6 160. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
7 full herein.

8 161. Labor Code § 246 provides that an Employee who “works in California for the
9 same employer for 30 or more days within a year from the commencement of employment is
10 entitled to paid sick days as specified in this section.” Defendants failed to provide Plaintiffs and
11 the other similarly Aggrieved Employees with all their required and earned sick days, in violation
12 of Labor Code § 246.

13 162. Defendants have also failed to provide COVID-19 supplemental sick leave to the
14 Aggrieved Employees during the relevant time period, including by failing to provide two work
15 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
16 248.2. These violations give rise to damages and penalties as these sections are enforced through
17 Labor Code § 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar
18 amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty
19 dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four
20 thousand dollars (\$4,000), shall be included in the administrative penalty.”

21 163. Plaintiffs accordingly seek this relief available for Defendants' failure to provide
22 Aggrieved Employees with all their required and earned sick days and all their COVID-19
23 supplemental sick leave in violation of Labor Code §§ 246, 248.1, and the civil and statutory
24 penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2,
25 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code
26 § 2699(g)(1). Labor Code § 2699(g)(1).

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1 **NINTH CAUSE OF ACTION**

2 **PENALTIES UNDER THE PAGA FOR VIOLATION OF LABOR CODE § 2810.5**

3 **(Against All Defendants)**

4 164. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

6 165. Defendants were required to provide Plaintiffs and the aggrieved employees certain
7 specific information upon hiring pursuant to California Labor Code § 2810.5, which provides that:
8 “At the time of hiring, an employer shall provide to each employee a written notice, in the
9 language the employer normally uses to communicate employment-related information to the
10 employee, containing” specific required information.

11 166. Upon information and belief, Defendants failed to provide this information to the
12 Aggrieved Employees as required under Labor Code § 2810.5. Defendant 5TH AXIS was listed on
13 the notice provided when to Plaintiffs when they were hired, but Defendants failed to list
14 Plaintiffs’ hourly rate and overtime rates of pay. Upon information and belief, Defendants
15 committed similar violations in connection with the other similarly Aggrieved Employees.

16 167. For failure to provide information as required under Labor Code § 2810.5, and
17 Labor Code § 2699.5, Plaintiffs seek penalties available and applicable under Labor Code §§
18 2810.5, 1198, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code §
19 2699(g)(1).

20 **TENTH CAUSE OF ACTION**

21 **PENALTIES UNDER THE PAGA FOR FAILURE TO REIMBURSE NECESSARY**
22 **BUSINESS EXPENSES AND PROVIDE SAFETY DEVICES AND SAFEGUARDS**

23 **UNDER LABOR CODE §§ 2802, 6401, 6403**

24 **(Against All Defendants)**

25 168. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
26 full herein.

27 169. Plaintiffs are informed and believe and based thereon allege that throughout the
28 period applicable, Defendants required Plaintiffs and the Aggrieved Employees to pay for

1 necessary work related expenses they incurred without reimbursing them. For example,
2 Defendants followed a company-wide policy of requiring Aggrieved Employees to communicate
3 with their supervisors regarding work related matters during work shifts using their personal
4 cellular phones.

5 170. Additionally, Defendants failed to provide safety devices and safeguards
6 reasonably adequate to render the employment of the Aggrieved Employees and their place of
7 employment safe, and failed to reimburse Plaintiffs and the Aggrieved employees for required
8 protective clothing and eyewear and shoes, tools other equipment. More specifically, Plaintiffs
9 were required by Defendant to wear safety glasses, safety gloves, an apron, and steel toed boots to
10 perform their daily job duties, and were required to purchase them themselves without
11 reimbursement from Defendants. Aggrieved Employees were also required to purchase tools such
12 as calipers, dial indicators, rules, micrometers, magnetic bases and tool boxes for storage as
13 Defendants did not provide these to Employees for the performance of their duties. These items
14 were all necessary for the Aggrieved Employees to work around and with machines throughout
15 their shifts.

16 171. As addressed above. Plaintiffs and the Aggrieved Employees were not reimbursed
17 for those lawful and necessary work related expenses or losses incurred in direct discharge of their
18 job duties during employment with Defendants and at the direction of the Defendants pursuant to
19 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Labor Code § 2802
20 provides that: “(a) An employer shall indemnify his or her employee for all necessary expenditures
21 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or
22 of his or her obedience to the directions of the employer,... (b) All awards made by a court or by
23 the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under
24 this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue
25 from the date on which the employee incurred the necessary expenditure or loss. (c) For purposes
26 of this section, the term “necessary expenditures or losses” shall include all reasonable costs,
27 including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted
28 by this section....”

1 172. Section 9(B) of IWC Wage Order No. 1 instructs that: “When tools or equipment
2 are required by the employer or are necessary to the performance of a job, such tools and
3 equipment shall be provided and maintained by the employer, except that an employee whose
4 wages are at least two (2) times the minimum wage provided herein may be required to provide
5 and maintain hand tools and equipment customarily required by the trade or craft...”

6 173. Additionally, Labor Code § 6401 provides that: “Every employer shall furnish and
7 use safety devices and safeguards, and shall adopt and use practices, means, methods, operations,
8 and processes which are reasonably adequate to render such employment and place of
9 employment safe and healthful. Every employer shall do every other thing reasonably necessary to
10 protect the life, safety, and health of employees. Labor Code § 6403 adds that “No employer shall
11 fail or neglect to do any of the following: (a) To provide and use safety devices and safeguards
12 reasonably adequate to render the employment and place of employment safe (b) To adopt and use
13 methods and processes reasonably adequate to render the employment and place of employment
14 safe. (c) To do every other thing reasonably necessary to protect the life, safety, and health of
15 employees.” The penalties for these violations must be imposed upon Defendants under Labor
16 Code § 6243 *et seq.*

17 174. Defendants’ knowing and willful failure to reimburse lawful necessary work related
18 expenses and losses and to provide necessary safety gear and protective equipment to Plaintiffs
19 and the Aggrieved Employees resulted in damages and loses because, among other things,
20 Defendants did not inform employees of their right to be reimbursed for those work related
21 expenses. As Defendants failed to inform and misled Plaintiffs and the Aggrieved Employees with
22 regard to their rights, Plaintiffs and the Aggrieved Employees were led to believe that incurring
23 those lawful and necessary expenses was an expected and essential function of their employment
24 with Defendants and that failure to incur those expenses would have adverse consequences on
25 their employment.

26 175. Labor Code § 2699(f)(2) states that: “For all provisions of this code except those
27 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
28 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs

1 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
2 employee per pay period for the initial violation and two hundred dollars (\$200) for each
3 aggrieved employee per pay period for each subsequent violation.”

4
5 176. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
6 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
7 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
8 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
9 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 2802...”
10 among the provisions of the Code that allow for recovery of civil penalties pursuant to the PAGA.

11 177. As such, Defendants are liable for PAGA penalties resulting from their failure to
12 reimburse necessary business expenses incurred by the Aggrieved Employees and to provide them
13 with necessary safety gear and protective equipment. Accordingly, Plaintiffs are entitled to
14 recover, and hereby seek through this Representative Action, all civil and statutory penalties
15 authorized for violations of California Labor Code §§ 1198 and 2802 and 6401 and 6403 and
16 Section 9(B) of the applicable IWC Wage Orders, and Plaintiffs seek all civil and statutory
17 penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2) and Labor Code §
18 6243 *et seq.* and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

19 **RELIEF REQUESTED**

20 WHEREFORE, Plaintiffs pray for the following relief:

21 1. On the First Cause of Action: For recovery of all civil penalties for unpaid
22 minimum and regular wages for all hours worked during the applicable statutory period as
23 permitted by California Labor Code §§ 510, 1194, 1197, 1197.1, 1198, 221 and 204 and Sections
24 2(K), 4, and 20 of the applicable IWC Wage Order(s), including civil and statutory penalties
25 available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and
26 2699.5, to be distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery
27 to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to
28 proof and subject to approval by the Court;

1 2. On the Second Cause of Action: For recovery of all civil penalties for unpaid
2 overtime and premium wages for all hours worked during the applicable statutory period as
3 permitted by Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20
4 of the applicable IWC Wage Order(s), including all civil and statutory penalties available and
5 applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, with
6 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an
7 amount according to proof and subject to approval by the Court;

8 3. On the Third Cause of Action: For recovery of all civil penalties for non-compliant
9 meal periods during the applicable statutory period and failure to pay one-hour of premium wages
10 to Plaintiffs and the Aggrieved Employees as permitted by Labor Code §§ 226.7, 512, 558, and
11 1198, and Section 11(A)-(E) of the applicable IWC Wage Orders, including all civil and statutory
12 penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections
13 558(a)(1)-(2), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor Code §
14 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
15 Employees in an amount according to proof and subject to approval by the Court;

16 4. On the Fourth Cause of Action: For recovery of all civil penalties for non-
17 compliant rest periods during the applicable statutory period and failure to pay one-hour of
18 premium wages to Plaintiffs and the Aggrieved Employees as permitted by Labor Code §§ 226.7,
19 512, 558, and 1198, and Section 11(A)-(E) of the applicable IWC Wage Orders, including all civil
20 and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558, including
21 sections 558(a)(1)-(2), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor
22 Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
23 Employees in an amount according to proof and subject to approval by the Court;

24 5. On the Fifth Cause of Action: For recovery of all civil penalties for inaccurate wage
25 statements Defendants provided to Plaintiffs and the Aggrieved Employees and failure to maintain
26 employment records as permitted by Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections
27 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s), including all civil and statutory
28 penalties available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and

1 2699(f)(2), and specifically electing civil penalties under Labor Code §226.3, which in addition to
2 other penalties provided by law, subjects Defendants to “a penalty in the amount of two hundred
3 fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars
4 (\$1,000) per employee for each violation in a subsequent citation, ...” to be distributed in the
5 manner provided by Labor Code § 2699(i), with 75% of recovery to the LWDA and 25% of the
6 recovery to the Aggrieved Employees in an amount according to proof and subject to approval by
7 the Court;

8 6. On the Sixth Cause of Action: For recovery of all civil penalties pursuant to Labor
9 Code § 2699(f)(2) where a statutory civil penalty is not provided, and where Aggrieved
10 Employees were not paid, all wages due to them, including, but not limited to, overtime wages,
11 minimum wages, and/or meal and rest period premiums, within any time period specified by
12 California Labor Code § 204, including for all civil and statutory penalties available and
13 applicable under Labor Code §§ 204, 2699(f)(2), and 2699.5, to be distributed in the manner
14 provided by Labor Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery
15 to the Aggrieved Employees in an amount according to proof and subject to approval by the
16 Court;

17 7. On the Seventh Cause of Action: For failing to pay all wages due and owing and to
18 timely pay them to Aggrieved Employees upon termination or separation from employment as
19 permitted under Labor Code §§ 201, 201, 203, 204, 1197.5, 1198, 2926, and 2927, including all
20 civil and statutory penalties available and applicable under Labor Code §§ 201, 202, 203, 210,
21 558, 1197, and 2699(f)(2), and Section 20 of the applicable IWC Wage Order(s), to be distributed
22 in the manner provided by Labor Code § 2699(i), with 75% of recovery to the LWDA and 25% of
23 the recovery to the Aggrieved Employees in an amount according to proof and subject to approval
24 by the Court;

25 8. On the Eighth Cause of Action: For failing to provide paid sick days and COVID-
26 19 supplemental sick leave in violation of Labor Code §§ 246, 248.1 and for the civil and statutory
27 penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2,
28 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code

1 § 2699(g)(1), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of
2 recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount
3 according to proof and subject to approval by the Court;

4 9. On the Ninth Cause of Action: For failure to provide information as required under
5 Labor Code § 2810.5, and Labor Code § 2699.5, and seeking penalties available and applicable
6 under Labor Code §§ 2810.5, 1198, and 2699(f)(2), and also for attorneys' fees and costs pursuant
7 to Labor Code § 2699(g)(1) in an amount according to proof and subject to approval by the Court;.

8 10. On the Tenth Cause of Action: For recovery of all civil penalties for Defendants'
9 failure to reimburse all necessary business expenses incurred by Plaintiffs and the Aggrieved
10 Employees as permitted by Labor Code §§ 1198 and 2802, and 6401 and 6403, and Section 9(B)
11 of the applicable IWC Wage Orders, including all civil and statutory penalties available and
12 applicable under Labor Code §§ 2802 and 2699(f)(2), to be distributed in the manner provided by
13 Labor Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the
14 Aggrieved Employees and for further penalties pursuant to Labor Code § 6243 *et seq.* in an
15 amount according to proof and subject to approval by the Court;

16 11. For reasonable attorneys' fees and costs of suit to the extent permitted under the
17 PAGA and applicable Labor Code sections, including Labor Code § 2699(g)(1), in an amount
18 according to proof and subject to Court approval;

19 12. For pre-judgment and post-judgment interest at the legal rate of 10% in the State of
20 California on readily calculable monies due to the extent provided by California law and
21 authorized under the PAGA, in an amount according to proof;

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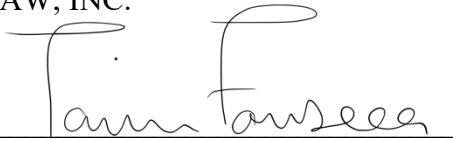
1 13. For the Court to otherwise determine the appropriate remedy to compensate
2 Plaintiffs and each Aggrieved Employee as required to promote fairness and justice; and

3 14. For such other and further relief as this Court may deem necessary, proper and just.
4

5 DATED: August 12, 2024

D.LAW, INC.

6
7 By



David Yermian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiffs PEDRO HUERTA,
NESTOR HERRERA HERNANDEZ
and all others similarly aggrieved

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: August 12, 2024

D.LAW, INC.

By



David Yeremian

Alvin B. Lindsay

Tania Fonseca

Attorneys for Plaintiffs PEDRO HUERTA,
NESTOR HERRERA HERNANDEZ
and all others similarly aggrieved

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

On August 12, 2024, I served the foregoing: **FIRST AMENDED CLASS COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Joel Glaser
joel@glaserlaw.org
Joel Glaser, APC
11500 W. Olympic Blvd., Suite 400
Los Angeles, CA 90064

Jamie Greene
Jamie.Greene@capstonelawyers.com
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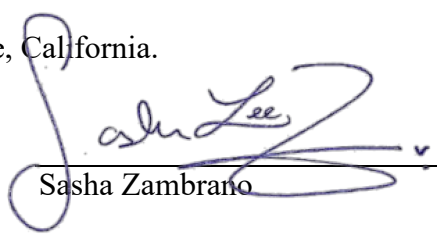
Jonathan Lee
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Capstone Law, APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above transmission.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 12, 2024, at Glendale, California.


Sasha Zambrano