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11 individually and on behalf of others similarly situated

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SONOMA

14 SCV-270920

15 VALENTE VELASCO JIMENEZ, individually
16 and on behalf of all others similarly situated,

17 PLAINTIFF,

18 v.

19 PACIFIC STATES INDUSTRIES,
20 INCORPORATED, a California corporation
21 d/b/a/ REDWOOD EMPIRE; and DOES 1
22 through 50, inclusive,

23 DEFENDANTS.

24 CASE NO.:

25 **CLASS ACTION AND REPRESENTATIVE
26 ACTION COMPLAINT FOR:**

- 27 (1) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1197, 1197.1, 1198,
28 1199);
(2) FAILURE TO PROVIDE MEAL PERIODS
AND/OR PAY MEAL PERIOD PREMIUMS
(LABOR CODE § 226.7, 512)
(3) FAILURE TO AUTHORIZE AND PERMIT
REST BREAKS AND/OR PAY MISSED REST
BREAK PREMIUMS (LABOR CODE § 226.7);
(4) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE § 226);
(5) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)
(6) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204);
(7) PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698 – 2699.5)

DEMAND FOR JURY TRIAL

1 Plaintiff Valente Velasco Jimenez (“Plaintiff”), individually, the State of California, and on
2 behalf of others similarly situated (hereinafter “Class Members”), complains and hereby alleges as
3 follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of himself and others similarly situated, as a class
6 action, and as a representative action pursuant to the California Private Attorneys General Act
7 (“PAGA”), against Defendant PACIFIC STATES INDUSTRIES, INCORPORATED, a California
8 corporation d/b/a REDWOOD EMPIRE and DOES 1 to 50 (collectively, “Defendants”) for: (1) failure
9 to pay all minimum wages due for time spent in pre-shift COVID temperature checks; (2) failure to
10 provide compliant meal periods and/or pay meal period premiums for noncompliant meal periods; (3)
11 failure to authorize and permit statutory rest breaks for every four hours of work or major fraction thereof
12 and/or pay rest period premiums for noncompliant rest breaks; (4) failure to provide complete and
13 accurate wage statements based on the foregoing; (5) failure to pay timely wages to employees based
14 on the foregoing; (6) unfair business practices based on the foregoing; and (7) PAGA penalties based
15 on the foregoing. Defendants have violated California statutory laws as described below.

16 2. Pursuant to California Judicial Council Emergency Rule 9, the “Class Period” is
17 designated as the period from four years, 5 months and 25 days from prior to the filing of this action
18 through the trial date. The “PAGA Period” is one year, 5 months and 25 days from the date of Plaintiff’s
19 PAGA letter to the LWDA through the present and on-going.¹ Defendants’ violations of California’s
20 wage-hour laws and unfair competition laws, as described more fully below, occurred throughout the
21 Class Period and PAGA Period.

22 **VENUE**

23 3. Venue is proper in this county under Section 395.5 of the California Code of Civil
24 Procedure. Many of the putative Class Members were employed by Defendants and/or performed work

25 ¹ California Judicial Council Emergency Rule 9 tolled the statute of limitations for civil causes of action
26 for 5 months and 25 days from April 6, 2020 until October 1, 2020. “Notwithstanding any other law,
27 the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April
28 6, 2020, until October 1, 2020.” Since PAGA’s statute of limitations is governed by Code of Civil
Procedure Section 340, and is thus is subject to modification by the Judicial Council through the
Emergency Rule, Plaintiff’s PAGA claim extends back to November 23, 2020.

1 for Defendants during the Class Period in Sonoma County. Defendants operate sawmills and conduct
2 lumber milling operations in the County of Sonoma. Many of the acts alleged herein, including
3 Defendants' failure to pay minimum wages, failure to provide compliant meal periods, failure to provide
4 compliant rest breaks, failure to issue complete and accurate itemized wage statements, and failure to
5 pay wages on a timely basis, occurred in Sonoma County. Venue is therefore proper in Sonoma County.

6 **JURISDICTION**

7 4. Defendants are within the jurisdiction of this Court. Defendants are California
8 companies that conduct manufacturing, distribution, sawmill, and timber milling operations in
9 California. Thus, Defendants have obtained the benefits of the laws of the State of California. In
10 addition, Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings causes of action
11 based solely on, and arising from, California law. The claims of the class are also based solely on
12 California law described herein. Furthermore, the total amount at issue in this case, inclusive of
13 attorneys' fees, is less than \$5 million. Therefore, jurisdiction is appropriate in the Superior Court of
14 California, County of Sonoma.

15 **THE PARTIES**

16 5. Plaintiff is a California resident who has worked for Defendants as a production line
17 employee during the relevant time period, from November 2002 through the present. At all relevant
18 times, Plaintiff has been employed by Defendants as an hourly, full-time, non-exempt employee.

19 6. From at least four years from the filing of this Complaint through the present, and on-
20 going, Defendants' employees, at various times throughout the Class Period, including Plaintiff during
21 his employment, were not paid all minimum wages owed for time spent in pre-shift COVID temperature
22 checks; were not provided compliant meal periods nor paid meal period premiums for missed meal
23 periods; were not provided compliant rest breaks nor paid rest break premiums for missed rest breaks;
24 were not provided accurate and/or complete itemized wage statements; and did not receive timely wages.

25 7. Plaintiff represents the State of California and the following group of PAGA aggrieved
26 employees defined as:

27 Plaintiff and all other individuals who are or were employed by Defendant
28 PACIFIC STATES INDUSTRIES, INCORPORATED as non-exempt
hourly-paid employees, who worked at least one shift in California from

November 23, 2020 to the present and ongoing (hereinafter referred to as “Aggrieved Employees”).

8. Plaintiff also seeks to represent a Class defined as:

Plaintiff and all other individuals who are or were employed by Defendant PACIFIC STATES INDUSTRIES, INCORPORATED as non-exempt hourly-paid employees, who worked at least one shift in California during the Class Period (hereinafter referred to as the “Class” or “Class Members”).

a. The members of the Class who worked for Defendants during the one year preceding the filing of this Complaint constitute the “Wage Statement Subclass.”

b. The Wage Statement Subclass is coextensive with the “Late Payment Subclass.”

9. Defendant PACIFIC STATES INDUSTRIES, INCORPORATED is a California corporation doing business as REDWOOD EMPIRE in Cloverdale, California. Defendants are lumber manufacturers and distributors, and conduct sawmill and timber milling operations in California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees. Plaintiff is informed and believes, and thereon alleges, that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of, each of the other Defendants, and that said acts and failures to act

1 were within the course and scope of said agency, employment, and/or direction and control.

2 12. Plaintiff is informed and believes, and based thereon alleges, that in accordance with
3 Labor Code Section 558.1, Defendants and any person acting on behalf of Defendants, are liable for
4 violating, or causing to violate, any provision regulating minimum wages or hours and days of work in
5 any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 226.7, 1193.6, 1194,
6 or 2802.

7 13. Defendants employed Plaintiff, the Class, and the Aggrieved Employees as non-exempt,
8 hourly-paid employees in California at various times during the Class Period and PAGA Period. On
9 information and belief, Defendants employed approximately 500 hourly-paid employees in California
10 during the Class Period.

11 **FACTUAL ALLEGATIONS**

12 14. Defendants operate and, at all times during the Class Period and PAGA Period, have
13 done business in California. Defendants, in the course of operating their business in California during
14 the Class Period and PAGA Period, employed Plaintiff, the Class, and the Aggrieved Employees as
15 hourly-paid non-exempt employees.

16 15. Labor Code § 1197 states the California requirement that employees must be paid at least
17 the minimum wage fixed by the Commission or by any applicable state or local law, and any payment
18 of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee
19 receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full
20 amount of this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage Order 1-
21 2001, obligate employers to pay each employee minimum wages for all hours worked.

22 16. These minimum wage standards apply to each hour employees worked or subject to
23 control by the employer for which they were not paid. Therefore, an employer’s failure to pay for any
24 particular hour of time worked by an employee or subject to the employer’s control is unlawful, even if
25 averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage
26 above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 324 (2005).

27 17. Here, Defendants required Plaintiff, the Class, and all Aggrieved Employees to regularly
28 perform work-off-the-clock for which they did not receive any compensation. Specifically, as part of

1 the Class Members’ and Aggrieved Employees’ employment, Defendants required Plaintiff, the Class,
2 and all Aggrieved Employees to undergo COVID-19 temperature checks in the parking lot area before
3 the start of their shift, and before they “clocked-in.” Specifically, from around March 2020 through
4 approximately December 2021, Plaintiff, the Class, and Aggrieved Employees were required to form a
5 line outside of Defendants’ production facility and were given a mandatory temperature check by
6 Defendants’ management team, while off the clock, before being allowed to clock in for their shifts.
7 Although Defendants maintained a common policy and practice of requiring Plaintiff, the Class, and the
8 Aggrieved Employees to stand/wait in line pre-shift for COVID-19 temperature checks during the Class
9 Period and PAGA Period, Defendants failed to compensate Plaintiff, the Class, and all Aggrieved
10 Employees for such time

11 18. Employees must be paid for all “hours worked.” Hours worked is considered “the time
12 during which an employee is subject to the control of an employer, and includes all the time the
13 employee is suffered or permitted to work, whether or not required to do so....” See Wage Order 1-
14 2001, Section 2(G); see also *Mendiola v. CPS Security Solutions, Inc.*, 60 Cal.4th 833 (2015). “[I]t is
15 only necessary that the worker be subject to the control of the employer in order to be entitled to
16 compensation.” *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 584 (2000) (internal citations omitted).
17 An employee is under the employer’s control and entitled to compensation when the employer ‘directs,
18 commands or restrains an employee.’ *Id.* at 583 (internal citation omitted).

19 19. As the California Supreme Court made clear in *Morillion*, when determining whether an
20 employee’s activity is under the employer’s control entitling him or her to compensation, the touchstone
21 is not whether the employer requires the activity and thus whether employees can avoid it, but the level
22 of control employers exert over employees during the activity: “The level of the employer’s control over
23 its employees, *rather than the mere fact that the employer requires the employees’ activity, is*
24 *determinative.*” *Morillion*, 22 Cal.4th at 587 (emphasis added).

25 20. In *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1056 (2020) (citing *Morillion*, 22 Cal.4th at 587)
26 the California Supreme Court reaffirmed its holding in *Morillion* that “[t]he level of the employer’s
27 control over its employees, rather than the mere fact that the employer requires the employees’ activity,
28 is determinative” concerning whether an activity is compensable under the “hours worked” control

1 clause. In *Frlekin*, the California Supreme Court found that time employees spent undergoing bag
2 searches at the end of their shifts was compensable. The Court reasoned its decision by analyzing factors
3 in determining whether an employer has exerted compensable control over employees:

4 We also emphasize that whether an activity is required remains probative in
5 determining whether an employee is subject to the employer’s control. But,
6 at least with regard to cases involving *onsite* employer-controlled activities,
7 the mandatory nature of an activity is not the only factor to consider. We
8 conclude that courts may and should consider additional relevant factors—
9 including, but not limited to, the location of the activity, the degree of the
employer’s control, whether the activity primarily benefits the employee or
employer, and whether the activity is enforced through disciplinary
measures—when evaluating such employer-controlled conduct.

10 *Frlekin*, 8 Cal.5th at 1056, italics in original.

11 21. To be free of the employer’s control for purposes of “hours worked,” the employee must
12 be free to use his or her time “effectively for his or her own purposes.” *Morillion*, 22 Cal.4th at 583.

13 22. Here, as in *Frlekin*, the Class and Aggrieved Employees could not avoid Defendants’
14 COVID-19 temperature checks (which took place on Defendants’ premises and before employees could
15 clock in) and could not then use their time effectively for their own purposes. As such, Defendants
16 exercised compensable control over the Class and Aggrieved Employees who underwent COVID-19
17 temperature checks, and stood in line to do so, and owe wages to the Class and Aggrieved Employees
18 for this time.

19 23. The California Department of Industrial Relations (“DIR”) recently issued guidance
20 regarding pre-shift worksite temperature checks and/or questionnaires. See Cal. Dept. of Industrial Relations,
21 Safe Reopening FAQs for Workers and Employers (July 8, 2021), available at
22 https://www.dir.ca.gov/covid19/FAQs_COVID-19_Safe_Reopening.htm. The DIR provides the following
23 in FAQ #10 titled “Medical Checks, Testing, and Vaccinations”:

24 Q: Must my employer pay me for time spent at my employer’s worksite
25 completing certain medical checks (including temperature checks) before
26 beginning a shift?

27 A: Yes. Employers must pay workers for all hours worked, including time
28 that a worker is under the control of the employer. Employers that require

1 their workers to complete a medical check in order to begin a shift, even if it
2 is recommended under public health orders, must compensate workers for
3 that time worked.

4 The term “hours worked” means the time during which a worker is subject to
5 the control of an employer and includes all the time the worker is suffered or
6 permitted work, whether or not required to do so. Under this definition, one
7 way to determine whether time a worker spends performing a task is
8 compensable—that is, whether it is time “worked”—is whether the employer
9 exercised control over the worker by requiring the worker to perform that
10 task.

11 If an employer requires that all workers perform a medical check (such as a
12 temperature check) onsite before beginning a shift, the time completing the
13 medical check, including any time waiting in line, would constitute time
14 worked. This requirement applies even if such tasks were performed pursuant
15 to a state or local public health guideline, because the check is done at the
16 request and thus under the control of the employer.

17 24. Notably, there is no de minimis defense for such time. *See, Troester v. Starbucks Corp.*,
18 5 Cal.5th 829 (2018) (given new technologies allowing time-tracking with specificity, the de minimis
19 principle not applicable in the context of an alleged policy requiring employees to work minutes off the
20 clock routinely).

21 25. Defendants’ policy and practice of requiring Plaintiff, the Class, and the Aggrieved
22 Employees to undergo pre-shift COVID-19 temperature checks, Defendants clearly violated Labor Code
23 § 1194. As a result of Defendants’ policy and practices described above, Defendants regularly failed to
24 pay Plaintiff, the Class, and all Aggrieved Employees for all hours worked in violation of Labor Code
25 §§ 1194 and 1197.

26 26. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by
27 an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages,
28 and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one

1 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
2 underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty
3 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
4 regardless of whether the initial violation is intentionally committed. As set forth above, Defendants
5 failed to compensate Plaintiff, the Class, and all Aggrieved Employees for all hours worked.
6 Accordingly, through PAGA and to the extent permitted by law Plaintiff, the Class, and all Aggrieved
7 Employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based
8 upon these same factual allegations, Plaintiff, the Class, and all Aggrieved Employees are entitled to
9 penalties under Labor Code §§ 203, 1197.1, and 1199.

10 27. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover
11 liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff, the Class,
12 and all Aggrieved Employees experienced on a regular basis, are not paid for all hours worked under
13 Labor Code § 1194, the employees may recover minimum wages for the time for which they received
14 no compensation.

15 28. Labor Code Section 512 provides in relevant part, “An employer shall not employ an
16 employee for a work period of more than five hours per day without providing the employee with a meal
17 period of not less than 30 minutes, except that if the total work period per day of the employee is no
18 more than six hours, the meal period may be waived by mutual consent of both the employer and
19 employee. An employer shall not employ an employee for a work period of more than 10 hours per day
20 without providing the employee with a second meal period of not less than 30 minutes, except that if the
21 total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent
22 of the employer and the employee only if the first meal period was not waived.”

23 29. IWC Wage Order 1-2001, § 11 states, “(A) No employer shall employ any person for a
24 work period of more than five (5) hours without a meal period of not less than 30 minutes, except that
25 when a work period of not more than six (6) hours will complete the day’s work the meal period may
26 be waived by mutual consent of the employer and the employee. . . . (B) An employer may not employ
27 an employee for a work period of more than ten (10) hours per day without providing the employee with
28 a second meal period of not less than 30 minutes, except that if the total hours worked is no more than

1 12 hours, the second meal period may be waived by mutual consent of the employer and the employee
2 only if the first meal period was not waived.”

3 30. Under California law, when an employee works for a work period of more than five (5)
4 hours, a meal period must be provided no later than the end of the employee’s fifth hour of work, *i.e.*,
5 no later than the start of the employee’s sixth hour of work. When an employee works for a period of
6 more than 10 hours, a second meal period must be provided no later than the end of the employee’s tenth
7 hour of work, *i.e.*, no later than the start of the employee’s eleventh hour of work. *See Brinker*
8 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

9 31. Labor Code Section 226.7, subdivision (a) states, “An employer shall not require an
10 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
11 or applicable regulation, standard, or order of the Industrial Welfare Commission”

12 32. Here, on information and belief, Plaintiff, the Class, and the Aggrieved Employees were
13 not provided timely, compliant, off-duty meal periods. Plaintiff is informed and believes, and based
14 thereon alleges, that during the relevant period, Defendants (1) did not have legally-compliant policies
15 regarding the provision and timing of meal periods and/or systematically disregarded any purported
16 meal period policies; (2) Defendants’ management affecting hourly non-exempt employees failed to
17 implement and enforce legally compliant meal period policies and practices; (3) Defendants failed to
18 adequately inform and train aggrieved employees regarding their right to take timely, uninterrupted, and
19 duty-free meal periods; (4) Defendants failed to adequately inform and train aggrieved employees about
20 their right to premium wages for non-compliant meal periods; and (5) Defendants did not have any
21 policy or practice pertaining to meal period violations.

22 33. Plaintiff is further is informed and believes, and based thereon alleges, that Defendants
23 further violated Labor Code Sections 226.7 and 512 and IWC Wage Order 1-2001, § 11 by failing to
24 compensate Plaintiff and other aggrieved employees who were not provided with a meal period one (1)
25 additional hour of compensation at each employee’s regular rate of pay for each workday that a
26 compliant meal period was not provided.

27 34. Section 12 of the applicable IWC Wage Order requires California employers to provide
28 a 10-minute duty-free and uninterrupted rest break to employees for each 4 hours of work, or major

1 fraction thereof. Insofar as practicable, the rest period shall be in the middle of each work period. See,
2 IWC Wage Order 1-2001, § 12. Labor Code Section 226.7 imposes a premium payment of one hour of
3 pay at the employee’s regular rate of pay for each workday where a compliant rest break is not provided
4 to an employee on a timely basis.

5 35. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
6 authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law
7 (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker*
8 Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful
9 policy:

10 An employer is required to authorize and permit the amount of rest break
11 time called for under the wage order for its industry. If it does not—if, for
12 example, it adopts a uniform policy authorizing and permitting only one rest
13 break for employees working a seven-hour shift when two are required—***it***
14 ***has violated the wage order and is liable.***

15 *Brinker*, 53 Cal.4th at 1033 (emphasis added).

16 36. Here, Plaintiff, the Class, and the Aggrieved Employees were not authorized nor
17 permitted to take all statutory rest breaks and did not take all statutory rest breaks during their shifts. On
18 information and belief, Plaintiff, the Class, and the Aggrieved Employees were not authorized nor
19 permitted to take a third rest break when they worked more than ten (10) hours in violation of Labor
20 Code § 226.7, subd. (d). *Brinker*, 53 Cal.4th at 1028 (employees working 10 or more hours are entitled
21 to a third rest break); *Alberts v. Aurora Behavioral Health Care*, 241 Cal.App.4th 388, 406 (2015) (rest
22 break policy is noncompliant where it does not provide for a third rest break in shifts exceeding 10
23 hours).

24 37. As to Plaintiff, the Wage Statement Subclass (as defined in Paragraph 8, and all
25 Aggrieved Employees, Defendants also failed to provide accurate itemized wage statements in
26 accordance with Labor Code § 226, subd. (a).

27 38. Defendants knowingly and intentionally failed to pay Plaintiff, Aggrieved Employees,
28 and all Wage Statement Subclass Members all minimum wages associated with COVID-19 temperature

1 checks, and failed to pay meal and rest break premiums owed for missed statutory meal periods and rest
2 breaks. Accordingly, all wage statements contained inaccurate information as to hours worked and
3 wages earned (since time spent on pre-shift COVID temperature checks were never included).
4 Moreover, Plaintiff, Aggrieved Employees, and all Wage Statement Subclass Members also suffered
5 legal “injury” for purposes of Labor Code Section 226(e) insofar as they were unable to readily and
6 easily determine the information required to be set forth by Section 226(a). Specifically, Plaintiff,
7 Aggrieved Employees, and the Wage Statement Subclass Members were unable to determine the actual
8 and accurate total hours worked by the employees, the gross wages earned, the net wages earned, since
9 time spent on mandatory COVID-19 temperature checks, and waiting in line was always done off the
10 clock and pre-shift.

11 39. Plaintiff, the Wage Statement Subclass and the Aggrieved Employees will prevail on
12 their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or willfulness.
13 *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“a plaintiff seeking civil penalties
14 under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and
15 ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v. Coastal Pacific Food*
16 *Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a section 226(e)
17 claim do not apply to a PAGA claim for a violation of section 226(a).”).

18 40. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
19 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
20 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
21 violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction
22 statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above,
23 Defendants failed to provide Plaintiff, the Wage Statement Subclass Members, and all Aggrieved
24 Employees with accurate itemized wage statements. Accordingly, Plaintiff, the Wage Statement
25 Subclass Members, and all Aggrieved Employees may recover Labor Code § 226.3 penalties under
26 PAGA for Defendants’ violations of Labor Code § 226(a) in addition to the normal penalties provided
27 for in Section 226.

28 41. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any

1 employment are due and payable twice during each calendar month, on days designated in advance by
2 the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed
3 satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid
4 not more than seven calendar days following the close of the payroll period.”

5 42. Due to Defendants’ failure to pay Plaintiff and all Aggrieved Employees on a timely and
6 bi-monthly basis for all applicable minimum wages, Defendants failed to timely pay Plaintiff and all
7 Aggrieved Employees all wages owed within seven (7) days of the close of the payroll period in
8 accordance with Labor Code § 204(d) on a regular and consistent basis.

9 43. Labor Code Section 210 states, in relevant part:

10 (a) In addition to, and entirely independent and apart from, any other penalty
11 provided in this article, every person who fails to pay the wages of each employee
12 as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
13 1197.5, shall be subject to a penalty as follows:

- 14 (1) For any initial violation, one hundred dollars (\$100) for each failure to
15 pay each employee.
16 (2) For each subsequent violation, or any willful or intentional violation,
17 two hundred dollars (\$200) for each failure to pay each employee, plus 25
18 percent of the amount unlawfully withheld.
19

20 44. Plaintiff seeks to recover all penalties available under Labor Code Section 210 for
21 Defendants’ violations of Labor Code Section 204.

22 45. In accordance with Labor Code Section 2698, *et seq.*, Plaintiff provided written notice to
23 the California Labor and Workforce Development Agency (“LWDA”), by filing a PAGA Notice online,
24 a copy of which was sent by certified mail to Defendants, notifying them of the specific provisions of
25 the Labor Code and IWC Wage Order(s) alleged to have been violated, including the facts and theories
26 to support the alleged violations. Plaintiff has also paid the \$75.00 fee to the LWDA. Pursuant to Labor
27 Code § 2699.3, no notice has been received and/or will have been received by Plaintiff from the LWDA
28 evidencing its intention to investigate within sixty-five (65) days from the postmark of Plaintiff’s PAGA

1 Notice. Thus, Plaintiff has or will soon have complied with all of the requirements set forth in Labor
2 Code Section 2699.3 to commence and proceed with a representative civil action under the PAGA.

3 46. Plaintiff by this action seeks to recover, on behalf of himself and all other current and
4 former Aggrieved Employees of Defendants, the civil penalties provided by PAGA.

5 **CLASS ACTION ALLEGATIONS**

6 47. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
7 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed
8 of and defined as: Plaintiff and all other individuals who are or were employed by Defendant PACIFIC
9 STATES INDUSTRIES, INCORPORATED, as non-exempt hourly-paid employees, who worked at
10 least one shift in California during the Class Period (hereinafter referred to as the “Class” or “Class
11 Members”). All such Class Members were subject to Defendants’ unlawful policies and practices
12 including, failure to pay all minimum wages due for time spent in pre-shift COVID temperature checks;
13 failure to provide compliant meal periods and/or pay meal period premiums for noncompliant meal
14 periods; failure to authorize and permit statutory rest periods for every four hours of work or major
15 fraction thereof and/or pay rest period premiums for noncompliant rest breaks; failure to provide
16 complete and accurate wage statements; and failure to pay timely wages to employees based on the
17 foregoing.

18 48. This action has been brought and may properly be maintained as a class action under
19 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
20 the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

21 a. Numerosity: The potential members of the Class as defined are so numerous that
22 joinder of all the members of the Class is impracticable. While the precise number of Class Members
23 has not been determined at this time, Plaintiff is informed and believes that Defendants have employed
24 approximately 500 Class Members as hourly-paid workers in California who were subject to
25 Defendants’ unlawful compensation, meal period, rest break, wage statement, and final pay policies.
26 The Class Members are dispersed throughout California. Joinder of all members of the proposed classes
27 is therefore not practicable.

28 b. Commonality: There are questions of law and fact common to Plaintiff and the

1 Class that predominate over any questions affecting only individual members of the Class. These
2 common questions of law and fact include, without limitation:

3 i. Whether Defendants violated Sections 1194 and 1197 of the Labor Code by
4 failing to pay minimum wages for all hours worked, including for pre-shift time associated with COVID-
5 19 temperature checks;

6 ii. Whether Defendants violated Labor Code Sections 226.7 and 512 and IWC Wage
7 Order 1-2001 section 11 by failing to provide compliant meal periods during the Class Period;

8 iii. Whether Defendants violated Labor Code Sections 226.7 and 512 by failing to
9 pay meal period premiums for missed or noncompliant meal periods during the Class Period;

10 iv. Whether Defendants violated Labor Code Section 226.7 and IWC Wage Order 1-
11 2001 section 12 by failing to provide compliant rest breaks during the Class Period;

12 v. Whether Defendants violated Labor Code Section 226.7 by failing to pay rest
13 period premiums for missed or noncompliant rest breaks during the Class Period;

14 vi. Whether Defendants failed to provide Plaintiff and the members of the Class
15 compliant wage statements in violation of Labor Code Section 226(a);

16 vii. Whether Defendants violated Sections 204 and 210 of the Labor Code by failing
17 to pay member of the Class all wages due on a timely basis;

18 viii. Whether Defendants engaged in an unfair practice and violated Section 17200 of
19 the California Business and Professions Code by failing to pay Plaintiff and the members of the Class
20 all minimum wages owed, by failing to provide compliant meal periods; and by failing to provide
21 compliant rest breaks during the Class Period;

22 ix. Whether Plaintiff and the Class are entitled to restitution under Business and
23 Professions Code § 17200;

24 x. The proper formula(s) for calculating damages, interest, and restitution owed to
25 Plaintiff and the Class Members; and

26 xi. The nature and extent of class-wide damages.

27 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff
28 and Class Members sustained injuries and damages, and were deprived of property rightly belonging to

1 them, arising out of and caused by Defendants' common course of conduct in violation of law as alleged
2 herein, in similar ways and for the same types of unpaid wages.

3 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly
4 and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests
5 do not conflict with those of Class and Class Members. Counsel who represent Plaintiff are competent
6 and experienced in litigating large wage and hour class actions, and will devote sufficient time and
7 resources to the case and otherwise adequately represent the Class and Class Members.

8 e. Superiority of Class Action: A class action is superior to other available means
9 for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not
10 practicable, and questions of law and fact common to the Class predominate over any questions affecting
11 only individual members of the Class. Each Class Member has been damaged or may be damaged in
12 the future by reason of Defendants' unlawful policies and/or practices. Certification of this case as a
13 class action will allow those similarly situated persons to litigate their claims in the manner that is most
14 efficient and economical for the parties and the judicial system. Certifying this case as a class action is
15 superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendants have
16 enjoyed by failing to pay all minimum wages due, failing to provide compliant rest periods, and failing
17 to reimburse all work-related expenses, and will thereby effectuate California's strong public policy of
18 protecting employees from deprivation or offsetting of compensation earned in their employment. If
19 this action is not certified as a Class Action, it will be impossible as a practical matter, for many or most
20 Class Members to bring individual actions to recover monies unlawfully withheld from their lawful
21 compensation due from Defendants', due to the relatively small amounts of such individual recoveries
22 relative to the costs and burdens of litigation.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

25 **Labor Code §§ 1194, 1194.2 and 1197**

26 **On behalf of Plaintiff and the Class Against All Defendants**

27 49. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
28 the preceding paragraphs.

1 50. The actionable period for this cause of action is three years prior to the filing of the
2 Complaint, and as tolled by Judicial Council Emergency Rule 9, through the present, and on-going until
3 the violations are corrected, or the Class is certified.

4 51. Labor Code § 1197 states the California requirement that employees must be paid at least
5 the minimum wage fixed by the Commission, and any payment of less than the minimum wage is
6 unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum
7 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC
8 Wage Order 1-2001 also obligates employers to pay each employee minimum wages *for all hours*
9 *worked*. These minimum wage standards apply to each hour employees worked for which they were not
10 paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is
11 unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an
12 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 324 (2005).

13 52. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
15 standard conditions of labor for employees. The employment of any employee for longer hours than
16 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

17 53. As alleged herein, Defendants required Plaintiff and the Class to regularly perform work-
18 off-the-clock before their shifts for which they did not receive any compensation. Specifically, as part
19 of the Class Members’ employment, Defendants required Plaintiff and all Class Members to undergo
20 COVID-19 temperature checks in the parking lot area before the start of their shift, and before they
21 “clocked in.” Specifically, from around March 2020 and continuing to December 2021, Plaintiff and the
22 Class have been required to form a line outside of Defendants’ production facility and were given a
23 temperature check by Defendants’ management team, while off the clock, before being allowed to clock
24 in for their shifts. Only after this mandatory task was completed did Plaintiff and the Class finally clock
25 in for their shifts. Although Defendants maintained a common policy and practice of requiring Plaintiff
26 and the Class to stand/wait in line pre-shift for COVID-19 temperature checks during the Class Period,
27 Defendants failed to compensate Plaintiff and the Class for such time.

28 54. Labor Code § 1194 provides, in part, that any employee receiving less than the legal

1 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including
2 interest thereon, reasonable attorney's fees, and costs of suit.

3 55. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount
4 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.
5 Where an employee, such as Plaintiff and the other Class members, is not paid for all hours worked
6 under Labor Code § 1194, the employee may recover minimum wages for the time associated with the
7 overtime for which they received no compensation. See *Sillah v. Command Int'l Sec. Servs.*, 154 F.
8 Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime could recover
9 liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage); *accord*
10 *Andrade v. Arby's Rest. Grp., Inc.*, 225 F.Supp.3d 1115, 1132-33 (N.D. Cal. 2016).

11 56. Plaintiff and the other Class Members suffered and continue to suffer losses related to
12 the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful
13 acts and Labor Code violations in an amount to be shown according to proof at trial and within the
14 jurisdictional limitations of this Court.

15 57. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
16 to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees, and costs to
17 the extent permitted by law.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

20 **AND/OR PAY MISSED MEAL PERIOD PREMIUMS**

21 **Labor Code §§ 226.7, 512; IWC Wage Order 1-2001, Section 11**

22 **On behalf of Plaintiff and the Class Against All Defendants**

23 58. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
24 the preceding paragraphs.

25 59. The actionable period for this cause of action is three years prior to the filing of the
26 Complaint, and as tolled by Judicial Council Emergency Rule 9, through the present, and on-going until
27 the violations are corrected, or the Class is certified.

28 60. Labor Code Section 512 provides in relevant part, "An employer shall not employ an

1 employee for a work period of more than five hours per day without providing the employee with a meal
2 period of not less than 30 minutes, except that if the total work period per day of the employee is no
3 more than six hours, the meal period may be waived by mutual consent of both the employer and
4 employee. An employer shall not employ an employee for a work period of more than 10 hours per day
5 without providing the employee with a second meal period of not less than 30 minutes, except that if the
6 total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent
7 of the employer and the employee only if the first meal period was not waived.”

8 61. IWC Wage Order 1-2001, § 11 states, “(A) No employer shall employ any person for a
9 work period of more than five (5) hours without a meal period of not less than 30 minutes, except that
10 when a work period of not more than six (6) hours will complete the day’s work the meal period may
11 be waived by mutual consent of the employer and the employee. . . . (B) An employer may not employ
12 an employee for a work period of more than ten (10) hours per day without providing the employee with
13 a second meal period of not less than 30 minutes, except that if the total hours worked is no more than
14 12 hours, the second meal period may be waived by mutual consent of the employer and the employee
15 only if the first meal period was not waived.”

16 62. Under California law, when an employee works for a work period of more than five (5)
17 hours, a meal period must be provided no later than the end of the employee’s fifth hour of work, *i.e.*,
18 no later than the start of the employee’s sixth hour of work. When an employee works for a period of
19 more than 10 hours, a second meal period must be provided no later than the end of the employee’s tenth
20 hour of work, *i.e.*, no later than the start of the employee’s eleventh hour of work. *See Brinker*, 53
21 Cal.4th 1004.

22 63. Labor Code Section 226.7, subdivision (a) states, “An employer shall not require an
23 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
24 or applicable regulation, standard, or order of the Industrial Welfare Commission”

25 64. Here, on information and belief, Plaintiff, the Class, and the Aggrieved Employees were
26 not provided timely, compliant, off-duty meal periods. Plaintiff is informed and believes, and based
27 thereon alleges, that during the relevant period, Defendants (1) did not have legally-compliant policies
28 regarding the provision and timing of meal periods and/or systematically disregarded any purported

1 meal period policies; (2) Defendants' management affecting hourly non-exempt employees failed to
2 implement and enforce legally compliant meal period policies and practices; (3) Defendants failed to
3 adequately inform and train aggrieved employees regarding their right to take timely, uninterrupted, and
4 duty-free meal periods; (4) Defendants failed to adequately inform and train aggrieved employees about
5 their right to premium wages for non-compliant meal periods; and (5) Defendants did not have any
6 policy or practice pertaining to meal period violations.

7 65. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
8 further violated Labor Code Sections 226.7 and 512 and IWC Wage Order 1-2001, § 11 by failing to
9 compensate Plaintiff and other aggrieved employees who were not provided with a meal period one (1)
10 additional hour of compensation at each employee's regular rate of pay for each workday that a
11 compliant meal period was not provided.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**

14 **AND/OR PAY MISSED REST PERIOD PREMIUMS**

15 **Labor Code § 226.7; IWC Wage Order 1-2001, Section 12**

16 **On behalf of Plaintiff and the Class Against All Defendants**

17 66. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
18 the preceding paragraphs.

19 67. The actionable period for this cause of action is three years prior to the filing of the
20 Complaint, and as tolled by Judicial Council Emergency Rule 9, through the present, and on-going until
21 the violations are corrected, or the Class is certified.

22 68. Section 12 of the applicable IWC Wage Order requires California employers to provide
23 a 10-minute duty-free and uninterrupted rest break to employees for each 4 hours of work, or major
24 fraction thereof. Insofar as practicable, the rest period shall be in the middle of each work period. See,
25 IWC Wage Order 1-2001, § 12. Labor Code Section 226.7 imposes a premium payment of one hour of
26 pay at the employee's regular rate of pay for each workday where a compliant rest break is not provided
27 to an employee on a timely basis.

28 69. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not

authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker, 53 Cal.4th at 1033 (emphasis added).

70. Here, Plaintiff and the Class were not authorized or permitted to take rest breaks and did not take their rest breaks during their shifts. Plaintiff and the Class were thus not able to receive their first, second, and/or third rest breaks (for shifts that were longer than 8 hours and 12 hours respectively, or major fractions thereof). On information and belief, Plaintiff, the Class, and the Aggrieved Employees were not authorized nor permitted to take a third rest break when they worked more than ten (10) hours in violation of Labor Code § 226.7, subd. (d). *Brinker*, 53 Cal.4th at 1028 (employees working 10 or more hours are entitled to a third rest break); *Alberts v. Aurora Behavioral Health Care*, 241 Cal.App.4th 388, 406 (2015) (rest break policy is noncompliant where it does not provide for a third rest break in shifts exceeding 10 hours).

71. Thus, Defendants are and were in violation of applicable California law by failing to authorize and permit all statutory rest breaks.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS

Labor Code § 226(a) and (e)

On behalf of Plaintiff and the Wage Statement Subclass Against All Defendants

72. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

73. The actionable period for this cause of action is one year prior to the filing of this

1 Complaint, and as tolled by Judicial Council Emergency Rule 9, through the present, as tolled by and
2 on-going until the violations are corrected, or the subclass is certified. This claim is brought on behalf
3 of the Wage Statement Subclass.

4 74. Section 226(a) of the California Labor Code provides, in relevant part:

5 Every employer shall...furnish each of his or her employees...an accurate
6 itemized statement in writing showing (1) gross wages earned, (2) total
7 hours worked by the employee . . . , (3) the number of piece-rate units earned
8 and any applicable piece rate if the employee is paid on a piece-rate basis,
9 (4) all deductions, provided that all deductions made on written orders of
10 the employee may be aggregated and shown as one item, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is paid,
12 (7) the name of the employee and the last four digits of his or her social
security number or an employee identification number other than a social
security number, (8) the name and address of the legal entity that is the
employer . . . , and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate
by the employee.

13 75. As alleged herein, Defendants knowingly and intentionally failed to pay Plaintiff and all
14 Wage Statement Subclass Members all minimum wages associated with COVID-19 temperature checks
15 and meal period and rest break premiums for noncompliant meal periods and rest breaks. Accordingly,
16 all wage statements contained inaccurate information as to hours worked and wages earned (since time
17 spent on pre-shift COVID temperature checks and premiums were never included). Plaintiff and all
18 Wage Statement Subclass Members also suffered legal “injury” for purposes of Labor Code Section
19 226(e) insofar as they were unable to readily and easily determine the information required to be set
20 forth by Section 226(a). Specifically, Plaintiff and the Wage Statement Subclass Members were unable
21 to determine the actual and accurate total hours worked by the employees, the gross wages earned, the
22 net wages earned, since time spent on COVID-19 temperature checks, and waiting in line was always
23 done off the clock and pre-shift.

24 76. Defendants’ violation of Labor Code § 226 was knowing and intentional. *See Garnett v.*
25 *ADT LLC*, 139 F.Supp. 3d 1121, 1134 (E.D. Cal. 2015) (finding that the defendant knowingly and
26 intentionally violated Labor Code § 226 because defendant “knew that it was not providing total hours
27 worked to plaintiff or other employees paid on commission” even though it believed that employees
28 paid solely on commission or commission and salary “are exempt and therefore we do not record hours

1 on a wage statement”).

2 77. As a result of Defendants’ failure to issue compliant wage statements to Plaintiff and the
3 Wage Statement Subclass Members (i.e., those members of the class who were employed by Defendants
4 during the actionable period for this cause of action) in violation of Section 226(a) of the California
5 Labor Code, Plaintiff and the Wage Statement Subclass Members are each entitled to recover an initial
6 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty
7 of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants pursuant
8 to Section 226(e) of the Labor Code, costs, and reasonable attorneys’ fees.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES ON A TIMELY BASIS**

11 **Labor Code §§ 204, 210**

12 **On behalf of Plaintiff and the Late Payment Subclass Against All Defendants**

13 78. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
14 the preceding paragraphs.

15 79. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
16 employment are due and payable twice during each calendar month, on days designated in advance by
17 the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are deemed
18 satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid
19 not more than seven calendar days after the end of the pay period.

20 80. Due to Defendants’ failure to pay Plaintiff and the Class Members for minimum wages
21 owed, Defendants violated Labor Code § 204 by failing to pay all wages due to the Late Payment
22 Subclass members within seven (7) days of the close of the payroll period on a regular and consistent
23 basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at * 3-5
24 (N.D. Cal. May 2, 2016) (failure to pay rest period premiums can support claims under Labor Code §§
25 203 and 204).

26 81. Labor Code § 210 provides that “in addition to, an entirely independent and apart from,
27 any other penalty provided in this article, every person who fails to pay the wages of each employee as
28 provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation,

1 one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or
2 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
3 plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and
4 practices described in detail above, Plaintiff and the Class are entitled to recover penalties under Labor
5 Code § 210. See also AB 673 (amending Section 210 to provide for the existence of a private right of
6 action to recover Section 210 penalties).

7 **SIXTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION LAW VIOLATIONS**

9 **(BUS. & PROF. CODE § 17200, ET SEQ.)**

10 **On Behalf of Plaintiff and the Class Against All Defendants**

11 82. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
12 the preceding paragraphs.

13 83. Section 17200 of the California Business & Professions Code prohibits any unlawful,
14 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person who
15 has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the
16 UCL. Such a person may bring such an action on behalf of himself and others similarly situated who
17 are affected by the unlawful, unfair, or fraudulent business practice.

18 84. Under Section 17208 of the California Business and Professions Code, the statute of
19 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this
20 cause of action is four years prior to the filing of this Complaint through the present, and on-going until
21 the violations are corrected, or the Class is certified.

22 85. Section 90.5(a) of the Labor Code states that it is the public policy of California to enforce
23 vigorously minimum labor standards in order to ensure employees are not required to work under
24 substandard and unlawful conditions, and to protect employers who comply with the law from those
25 who attempt to gain competitive advantage at the expense of their workers by failing to comply with
26 minimum labor standards.

27 86. As a direct and proximate result of Defendants’ unlawful business practices, Plaintiff and
28 the Class Members have suffered economic injuries. Defendants have profited from its unlawful, unfair,

1 and/or fraudulent acts and practices.

2 87. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to
3 Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages, unpaid rest period
4 premiums, the right to receive accurate itemized wage statements, and unreimbursed business expenses
5 due and interest thereon, from at least four years prior to the filing of this Complaint through to the date
6 of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits
7 and gains they have reaped and restore such profits and gains to Plaintiff and Class Members, from
8 whom they were unlawfully taken.

9 88. Through the actions alleged herein, Defendants have engaged in unfair competition
10 within the meaning of Section 17200 of the California Business & Professions Code, because
11 Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by wrongfully
12 denying them minimum wages, rest period premiums, the right to receive accurate itemized wage
13 statements, and therefore was substantially injurious to Plaintiff and the Class Members.

14 89. Defendants engaged in unfair competition in violation of Sections 17200 et seq. of the
15 California Business & Professions Code by violating Section 1194 of the California Labor Code.

16 90. Defendants' course of conduct, act and practice in violation of the California laws
17 mentioned above constitute independent violations of Sections 17200 et seq. of the California Business
18 and Professions Code.

19 91. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
20 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

21 92. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
22 specified herein by suing on behalf of himself and other similarly situated Class Members previously or
23 presently employed by Defendants in California. Plaintiff's success in this action will enforce important
24 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the
25 public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to
26 Code of Civil Procedure § 1021.5.

27 ///

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**

3 **PENALTIES FOR LABOR CODE VIOLATIONS**

4 **Labor Code §§ 2698-2699.5**

5 **On Behalf of Plaintiff, the LWDA and the Aggrieved Employees Against All Defendants**

6 93. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
7 the preceding paragraphs.

8 94. Plaintiff and the “Aggrieved Employees” under PAGA, i.e., those employees who, during
9 the PAGA Period, suffered the Labor Code violations alleged herein; specifically, violations of §§ 204,
10 210, 226(a), 226.7, 512, 1194, 1197, 1197.1, 1198, and 1199, of the Labor Code as well as sections 11
11 and of IWC Wage Order 1-2001 bring claims under PAGA.

12 95. Plaintiff is an “aggrieved employee” within the meaning of Labor Code Section 2699,
13 subdivision (c), and a proper representative to bring a civil action on behalf of herself and other current
14 and former non-exempt employees of Defendants under Labor Code sections 2699.3 because Plaintiff
15 was employed by Defendants and one or more of the alleged Labor Code violations was committed
16 against Plaintiff during the PAGA Period.

17 96. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all
18 other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject
19 to the following formula:

20 \$100 for the initial violation per employee per pay period; and

21 \$200 for each subsequent violation per employee per pay period.

22 These penalties will be allocated 75% to the Labor Workforce Development Agency
23 and 25% to the affected employees.

24 97. The Aggrieved Employees are all individuals who worked for Defendants as hourly-paid
25 employees in California during the PAGA Period. These employees were subject to the aforementioned
26 Labor Code violations, during the PAGA Period.

27 98. In addition, as set forth above, Defendants failed to provide Plaintiff and all Aggrieved
28 Employees with wage statements in compliance with Labor Code § 226(a). Labor Code § 226.3 provides

1 that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in
2 the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one
3 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
4 employer fails to provide the employee a wage deduction statement or fails to keep the required in
5 subdivision (a) of Section 226.”

6 99. Plaintiff seeks to recover the PAGA civil penalties through a representative action as
7 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*. 46 Cal.4th 969 (2009).
8 Therefore, class certification hereby of the PAGA claims is not required. *Id.*

9 100. Pursuant to Labor Code § 2699.3 (a), on May 20, 2021, Plaintiff gave written notice by
10 certified mail to Defendants, and to the Labor and Workforce Development Agency (“LWDA”) of his
11 claims, including the facts and theories supporting all claims outlined in this Complaint. Accordingly,
12 Plaintiff has or soon will have fulfilled all administrative prerequisites to the pursuit of his PAGA claim
13 on behalf of himself and all other current and former aggrieved employees of Defendants.

14 JURY DEMAND

15 101. Plaintiff demands trial by jury of his and the Class Members’ claims against Defendants,
16 except for the PAGA and UCL claims which will be tried to the Court.

17 PRAYER FOR RELIEF

18 Wherefore, Plaintiff, on behalf of himself and the members of the Class, and the LWDA and the
19 Aggrieved Employees, prays for judgment against Defendants as follows:

- 20 1. An Order than this action may proceed and be maintained as a class action;
- 21 2. On the First Cause of Action:
 - 22 a. A declaratory judgment that Defendants have violated California Labor Code
23 Sections 1194 and 1197 by failing to pay Plaintiff, the Class, and the Aggrieved Employees all minimum
24 wages due;
 - 25 b. An award to Plaintiff and the other members of the Class in the amount of their
26 unpaid minimum wages owed, plus interest and/or liquidated damages under 1194.2 during the Class
27 Period, as well as attorneys’ fees under Labor Code Section 1194;
- 28 3. On the Second Cause of Action:

1 a. A declaratory judgment that Defendants have violated California Labor Code §
2 226.7 and 512, and IWC Wage Order 1-2001 section 11 by failing to provide compliant meal periods to
3 Plaintiff, the Class, and the Aggrieved Employees;

4 b. An award to Plaintiff and the other members of the Class in the amount of their
5 unpaid meal period premiums owed during the Class Period under Labor Code Section 226.7;

6 4. On the Third Cause of Action:

7 a. A declaratory judgment that Defendants have violated California Labor Code §
8 226.7 and IWC Wage Order 1-2001 section 12 by failing to provide compliant rest periods to Plaintiff,
9 the Class, and the Aggrieved Employees;

10 b. An award to Plaintiff and the other members of the Class in the amount of their
11 unpaid rest period premiums owed during the Class Period under Labor Code Section 226.7;

12 5. On the Fourth Cause of Action:

13 a. A declaratory judgment that Defendants violated California Labor Code § 226 by
14 failing to issue compliant wage statements to Plaintiff, the Aggrieved Employees and the Wage
15 Statement Subclass members;

16 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each
17 initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay period
18 in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as
19 well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

20 6. On the Fifth Cause of Action:

21 a. A declaratory judgment that Defendants violated California Labor Code §§ 204
22 and 210;

23 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Late
24 Payment Subclass for penalties pursuant to Labor Code § 210.

25 7. On the Sixth Cause of Action:

26 a. That the Court find and declare that Defendants have violated the UCL and
27 committed unfair and unlawful business practices by failing to pay minimum wages, meal period
28 premiums, and rest period premiums;

b. Restitution, including, but not limited to, the relief permitted by sections 226.7, and 1194 of the California Labor Code (i.e., unpaid minimum wages and unpaid meal and rest period premiums owed during the Class Period).

9. On the Seventh Cause of Action:

a. A civil penalty against Defendants in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and the Aggrieved Employees during the PAGA Period;

b. A civil penalty against Defendants in the amount of \$250 per employee for the initial violation and \$1,000 per employee for each subsequent violation as specified in Section 226.3 of the California Labor Code for Plaintiff and the Aggrieved Employees during the PAGA Period;

c. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by Plaintiff's counsel in connection with the PAGA claims;

d. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and Class Members' PAGA claim against Defendants, as provided for in Labor Code § 2699(g)(1); and

10. All other relief as this Court deems proper.

DATED: June 1, 2022

Respectfully submitted,

PROXY LAW FIRM LLP

Rafael

Hengameh S. Safaei
Attorneys for Plaintiff VALENTE
VELASCO JIMENEZ, individually and on
behalf of others similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff Valente Velasco Jimenez, individually and on behalf of others similarly situated
3 hereby demands a jury trial with respect to all issues triable of right by jury.

4
5 DATED: June 1, 2022

6 Respectfully submitted,

7 **PROXY LAW FIRM LLP**

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Hengameh S. Safaei
12 Attorneys for Plaintiff VALENTE
13 VELASCO JIMENEZ, individually and on
14 behalf of others similarly situated
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