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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

MARQUIS HERRON, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other non-party
Aggrieved Employees,

Plaintiff,

vs.

TOWNSEND INDUSTRIES, INC., a
California corporation; KNIT-RITE, LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: BCV-24-104491

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Marquis Herron, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on January 13, 2025, until judgment (“non-party Aggrieved
14 Employees”).

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action given
23 that the State of California, as the real party in interest in this action, is not a “citizen” for
24 purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118,
25 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to
26 satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil
28 penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in Bakersfield, County of Kern, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Marquis Herron is a resident of Bakersfield, in Kern County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately October 2020 to August 2024. Plaintiff worked for Defendants as a Production Technician I. During his employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff's primary job duties included, without limitation, manufacturing braces which involved polishing, repairing, grinding, and custom fitting them.

7. TOWNSEND INDUSTRIES, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

8. KNIT-RITE, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

1 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
2 were the partners, agents, owners, or managers of TOWNSEND INDUSTRIES, INC. and
3 KNIT-RITE, LLC at all relevant times.

4 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
5 acts and omissions alleged herein was performed by, or is attributable to, TOWNSEND
6 INDUSTRIES, INC.; KNIT-RITE, LLC; and/or DOES 1 through 10 (collectively,
7 “Defendants” or “TOWNSEND”), each acting as the agent, employee, alter ego, and/or joint
8 venturer of, or working in concert with, each of the other co-Defendants and was acting within
9 the course and scope of such agency, employment, joint venture, or concerted activity with
10 legal authority to act on the others’ behalf. The acts of any and all Defendants were in
11 accordance with, and represent, the official policy of Defendants.

12 12. At all relevant times, Defendants, and each of them, ratified each and every act
13 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
14 and abetted the acts and omissions of each and all the other Defendants in proximately causing
15 the damages herein alleged.

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

19 14. Under California law, Defendants are jointly and severally liable as employers
20 for the violations alleged herein because they have each exercised sufficient control over the
21 wages, hours, working conditions, and employment status of Plaintiff and other non-party
22 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
23 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
24 of employment, determined their rate of pay, and maintained their employment records.
25 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
26 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
27 common-law employment relationship. As joint employers of Plaintiff and other non-party
28 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties and

1 all other relief available to Plaintiff and other non-party Aggrieved Employees under the law.

2 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
3 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
4 non-party Aggrieved Employees because Defendants have:

5 (a) jointly exercised meaningful control over the work performed by
6 Plaintiff and other non-party Aggrieved Employees;

7 (b) jointly exercised meaningful control over Plaintiff's and other non-party
8 Aggrieved Employees' wages, hours, and working conditions, including
9 the quantity, quality standards, speed, scheduling, and operative details
10 of the tasks performed by Plaintiff and other non-party Aggrieved
11 Employees;

12 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
13 perform work which is an integral part of Defendants' businesses; and

14 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
15 Employees as a matter of economic reality in that Plaintiff and other
16 non-party Aggrieved Employees were dependent on Defendants, who
17 shared the power to set the wages of Plaintiff and other non-party
18 Aggrieved Employees and determined their working conditions, and
19 who jointly reaped the benefits from the underpayment of their wages
20 and noncompliance with other statutory provisions governing their
21 employment.

22 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
23 there has existed a unity of interest and ownership between Defendants such that any
24 individuality and separateness between the entities has ceased.

25 17. TOWNSEND INDUSTRIES, INC.; KNIT-RITE, LLC; and DOES 1 through
26 10 are therefore alter egos of each other.

27 18. Adherence to the fiction of the separate existence of Defendants would permit
28 an abuse of the corporate privilege, and would promote injustice by protecting Defendants

1 from liability for the wrongful acts committed by them under the name “TOWNSEND.”

2 19. Plaintiff further alleges, upon information and belief, that Defendants
3 TOWNSEND INDUSTRIES, INC. and KNIT-RITE, LLC are alter egos of each other for the
4 following reasons:

5 (a) On the California Secretary of State’s website
6 (<https://bizfileonline.sos.ca.gov/>), TOWNSEND INDUSTRIES, INC.
7 and KNIT-RITE, LLC share the same agent for service of process,
8 “CSC – LAWYERS INCORPORATING SERVICE”;

9 (b) According to the Certificate of Merger filed with the California
10 Secretary of State on 12/18/2024, KNIT-RITE, LLC will merge with
11 and absorb TOWNSEND INDUSTRIES, INC.; and

12 (c) On information and belief, TOWNSEND INDUSTRIES, INC. and
13 KNIT-RITE, LLC utilize the same standardized employment forms and
14 issue the same employment policies.

15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 20. Defendants design and manufacture medical equipment such as prescription
17 quality braces. Upon information and belief, Defendants maintain a single, centralized
18 Human Resources (“HR”) department at their company headquarters in Bakersfield,
19 California, which is responsible for the recruiting and hiring of new employees, and
20 communicating and implementing Defendants’ company-wide policies, including timekeeping
21 policies and meal and rest period policies, to employees throughout California.

22 21. In particular, Plaintiff and other non-party Aggrieved Employees, on
23 information and belief, received the same standardized documents and/or written policies.
24 Upon information and belief, the usage of standardized documents and/or written policies,
25 including new-hire documents, indicate that Defendants dictated policies at the corporate level
26 and implemented them company-wide, regardless of their employees’ assigned locations or
27 positions. Upon information and belief, Defendants set forth uniform policies and procedures
28 in several documents provided at an employee’s time of hire.

1 22. Upon information and belief, Defendants maintain a centralized Payroll
2 department at their company headquarters in Bakersfield, California, which processes payroll
3 for all non-exempt, hourly paid employees working for Defendants at their various locations
4 in California, including Plaintiff and other non-party Aggrieved Employees. Based upon
5 information and belief, Defendants issue the same formatted wage statements to all non-
6 exempt, hourly paid employees in California, irrespective of their work locations. Upon
7 information and belief, Defendants process payroll for departing employees in the same
8 manner throughout the State of California, regardless of the manner in which each employee's
9 employment ends.

10 23. Defendants continue to employ non-exempt or hourly paid employees in
11 California.

12 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
14 and advisors knowledgeable about California labor and wage law, employment and personnel
15 practices, and about the requirements of California law.

16 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
17 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
18 were not recorded.

19 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 receive certain wages for overtime compensation and that they were not receiving certain
22 wages for overtime compensation.

23 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
26 meal and rest period premiums, that included as eligible income all remuneration required by
27 law, including but not limited to, all income derived from incentive pay, nondiscretionary
28 bonuses, and/or other forms of compensation, but failed to include all forms of remuneration

1 in calculating the regular rate of pay for Plaintiff and other non-party Aggrieved Employees.

2 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 receive at least minimum wages for compensation and that they were not receiving at least
5 minimum wages for work that was required to be done off-the-clock. In violation of the
6 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
7 least minimum wages for work done off-the-clock.

8 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
11 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
12 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
13 other non-party Aggrieved Employees were not provided with all meal periods or payment of
14 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
15 uninterrupted, thirty (30) minute meal period.

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
19 payment of one (1) additional hour of pay at their regular rates of pay when they were not
20 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
21 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
22 provided with payment of one (1) additional hour of pay at their regular rates of pay when
23 they were not authorized and permitted to take a compliant rest period.

24 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive complete and accurate wage statements in accordance with California law. In
27 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
28 were not provided complete and accurate wage statements.

1 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that they had a duty to maintain accurate and complete payroll records in
3 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
4 knowingly, and intentionally failed to do so.

5 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 timely payment of wages during their employment. In violation of the California Labor Code,
8 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
9 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
10 premiums, within permissible time periods.

11 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 timely payment of all wages earned upon termination of employment. In violation of the
14 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
15 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
16 and/or meal and rest period premiums, within permissible time periods.

17 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to maintain, for Plaintiff and other non-party
19 Aggrieved Employees, a temperature in work areas that provided reasonable comfort
20 consistent with industry-wide standards for the nature of the process and the work performed,
21 and to take all feasible means to reduce excessive heat or humidity to a degree providing
22 reasonable comfort, but failed to do so.

23 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 receive full reimbursement for all business-related expenses and costs they incurred during the
26 course and scope of their employment and that they did not receive full reimbursement of
27 applicable business-related expenses and costs incurred.

28 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants knew or should have known that Defendants had a duty to provide
2 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
3 of their employment with Defendants as required by the California Wage Theft Prevention
4 Act, but failed to do so.

5 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew or should have known that they had a duty to compensate
7 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
8 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
9 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
10 that they were properly denied wages, all in order to increase Defendants' profits.

11 39. At all times herein set forth, PAGA provides that any provision of law under
12 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
13 assessed and collected by the LWDA for violations of the California Labor Code and
14 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
15 civil action brought on behalf of themselves and other current or former employees pursuant
16 to procedures outlined in California Labor Code section 2699.3.

17 40. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
18 "any person who was employed by the alleged violator and personally suffered each of the
19 violations alleged."

20 41. Plaintiff and other current and former employees of Defendants are "aggrieved
21 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants'
22 current or former employees and each of the alleged violations were committed against them.

23 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
24 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
25 following requirements have been met:

- 26 (a) The aggrieved employee shall give written notice by online filing
27 (hereinafter "Employee's Notice") to the LWDA and by certified mail
28 to the employer of the specific provisions of the California Labor Code

1 alleged to have been violated, including the facts and theories to support
2 the alleged violations.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

6 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
7 employer and the aggrieved employee by certified mail that it does not
8 intend to investigate the alleged violation within sixty (60) calendar
9 days of the postmark date of the Employee's Notice. Upon receipt of
10 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
11 five (65) calendar days of the postmark date of the Employee's Notice,
12 the aggrieved employee may commence a civil action pursuant to
13 California Labor Code section 2699 to recover civil penalties in addition
14 to any other penalties to which the employee may be entitled.

15 43. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
16 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
17 provision other than those listed in Section 2699.5 after the following requirements have been
18 met:

19 (a) The aggrieved employee or representative shall give written notice by
20 online filing to the LWDA and by certified mail to the employer of the
21 specific provisions of the California Labor Code alleged to have been
22 violated (other than those listed in Section 2699.5), including the facts
23 and theories to support the alleged violation.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).

27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice. The employer shall

1 give written notice by certified mail within that period of time to the
2 aggrieved employee or representative and the agency if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the employee may commence a
6 civil action pursuant to Section 2699.

7 44. On January 13, 2025, Plaintiff provided written notice by online filing to the
8 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
12 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
13 Plaintiff PAGA Case Number LWDA-CM-1072943-25. A true and correct copy of Plaintiff's
14 written notice to the LWDA and Defendants are attached hereto as "Exhibit 1."

15 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff
16 sent the written notice described above, and the LWDA has not responded that it intends to
17 investigate Plaintiff's claims, and Defendants have not cured the violations.

18 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
19 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
20 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
21 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

22 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
23 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the Industrial Welfare
25 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
26 dollars (\$50) for each underpaid employee for each pay period for which the employee was
27 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was underpaid" Labor

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order.

48. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth above.

49. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

50. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

51. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

52. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover

1 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
2 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and
3 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
4 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
5 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 2802, and 2810.5.

6 53. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
9 Wage Order for Defendants' failure to compensate Plaintiff and other
10 non-party Aggrieved Employees with all required overtime pay, as set
11 forth below;
- 12 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to include all forms
14 of remuneration in the regular rate of pay as required by law for
15 purposes of paying overtime wages and/or meal and rest period
16 premiums to Plaintiff and other non-party Aggrieved Employees, as set
17 forth below;
- 18 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
19 the applicable IWC Wage Order for Defendants' failure to compensate
20 Plaintiff and other non-party Aggrieved Employees with at least
21 minimum wages for all hours worked, as set forth below;
- 22 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
23 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
24 and other non-party Aggrieved Employees with meal periods, as set
25 forth below;
- 26 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
27 applicable IWC Wage Order for Defendants' failure to authorize and
28 permit Plaintiff and other non-party Aggrieved Employees to take rest

periods, as set forth below;

- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;
- (i) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, and to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort, as set forth below;
- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (l) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

54. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission

1 shall be the . . . standard conditions of labor for employees. The employment of any employee
2 . . . under conditions of labor prohibited by the order is unlawful.”

3 55. California Labor Code section 1198 and the applicable IWC Wage Order
4 provide that it is unlawful to employ persons without compensating them at a rate of pay
5 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
6 number of hours worked by the person on a daily or weekly basis.

7 56. Specifically, the applicable IWC Wage Order provides that Defendants are and
8 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
9 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
10 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
11 (40) hours in a workweek.

12 57. The applicable IWC Wage Order further provides that Defendants are and were
13 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
14 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
15 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
16 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

17 58. California Labor Code section 510 codifies the right to overtime compensation
18 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
19 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
20 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
21 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
22 in a day on the seventh (7th) day of work.

23 59. During the relevant time period, Defendants willfully failed to pay all overtime
24 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
25 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
26 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
27 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
28 not recorded.

1 60. First, during the relevant time period, Defendants had, and continue to have,
2 practices and/or policies of understaffing and assigning heavy workloads, including imposing
3 production quotas, which led Plaintiff and other non-party Aggrieved Employees to work off-
4 the-clock outside of their scheduled shift times in order to complete their assigned tasks. For
5 example, Plaintiff arrived 10-15 minutes early to his shifts to prepare his workstation for the
6 day before clocking in, which he felt pressured to do so that he could start production and
7 work toward meeting his quotas immediately upon clocking in. As another example, at
8 Defendants' direction, Plaintiff would assist other employees for up to 15 minutes after
9 clocking out from his shifts. Thus, Defendants failed to track all of the time that employees
10 spent performing work-related tasks before and after their shifts, and Plaintiff and other non-
11 party Aggrieved Employees received no compensation for this time.

12 61. Second, Defendants had, and continue to have, a company-wide security policy
13 of allowing only certain employees to carry keys to Defendants' facility. Specifically, only
14 managerial employees were issued keys to access the facility at any given time. In adherence
15 with this policy, upon arriving to work for their scheduled shift start-times on the weekends,
16 Plaintiff and other non-party Aggrieved Employees were required to wait for up to 45 minutes
17 for a managerial employee to arrive at Defendants' premises and unlock the door in the
18 mornings, before they could enter and clock in for their shifts. This occurred more than 10
19 times throughout 2024. As a result, Plaintiff and other non-party Aggrieved Employees were
20 subject to Defendants' control before they had clocked in for their shifts but were not
21 compensated for this time.

22 62. Third, as stated, Defendants had, and continue to have, company-wide policies
23 and/or practices of understaffing, such that there were too few employees to handle the
24 workload, while also pressuring employees to meet production quotas. Defendants' policies
25 and/or practices resulted in a failure to provide Plaintiff and other non-party Aggrieved
26 Employees with adequate meal period coverage, and thus, Plaintiff and other non-party
27 Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods during
28 shifts when they were entitled to receive a meal period. Defendants also had a practice of

1 failing to schedule meal periods, which further caused Plaintiff and other non-party Aggrieved
2 Employees to not be relieved of their duties for compliant meal periods. For example,
3 Plaintiff had his meal periods interrupted by other employees asking questions and requesting
4 assistance, which took 5-6 minutes per instance and would occur a few times a week.
5 Consequently, Plaintiff and other non-party Aggrieved Employees were required to work
6 through and/or had their unpaid meal periods interrupted in order to complete their assigned
7 duties, time for which they were not paid.

8 63. Further, on information and belief, because Defendants frowned upon
9 employees accruing meal period premiums, Defendants' management adjusted Plaintiff's and
10 other non-party Aggrieved Employees' time records to reflect compliant meal periods,
11 regardless of whether they had received a compliant meal period or not, in order to strictly
12 limit the meal penalties that Defendants would otherwise owe. Additionally, Defendants'
13 company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved
14 Employees from recording all hours worked when their meal periods were shortened or
15 interrupted, because the system locked out Plaintiff and other non-party Aggrieved Employees
16 once they clocked out for a meal period, and would not permit them to clock back in from a
17 meal period before 30 minutes had elapsed. Thus, Defendants did not record all hours worked
18 during meal periods, and Plaintiff and other non-party Aggrieved Employees performed work
19 during meal periods for which they were not paid.

20 64. Defendants knew or should have known that as a result of these company-wide
21 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
22 their assigned duties off-the-clock before and after their shifts, and during meal periods, and
23 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
24 and other non-party Aggrieved Employees worked shifts of eight (8) hours or more a day, or
25 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
26 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
27 overtime wages for all of the overtime hours they actually worked.

28 65. Moreover, Defendants did not pay Plaintiff and other non-party Aggrieved

1 Employees the correct overtime rate for the recorded overtime hours that they generated. In
2 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
3 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
4 However, in violation of the California Labor Code, Defendants failed to incorporate all
5 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
6 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
7 overtime wage rate. Therefore, during times when Plaintiff and other non-party Aggrieved
8 Employees worked overtime and received these other forms of pay, Defendants failed to pay
9 all overtime wages by paying a lower overtime rate than required.

10 66. For example, Defendants paid Plaintiff and other non-party Aggrieved
11 Employees incentive pay and/or nondiscretionary bonuses which were listed on Plaintiff's and
12 other non-party Aggrieved Employees' wage statements as "Bonus" and "Gifts." During pay
13 periods that Plaintiff and other non-party Aggrieved Employees were paid overtime wages,
14 Defendants did not incorporate the incentive pay and/or nondiscretionary bonuses into
15 Plaintiff's and other non-party Aggrieved Employees' regular rate of pay and, as a result, paid
16 them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants
17 paid Plaintiff and other non-party Aggrieved Employees 1.5 times their hourly rate of pay
18 instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the
19 overtime rates of pay based on all remuneration paid has resulted in an underpayment of
20 overtime wages to Plaintiff and other non-party Aggrieved Employees on a company-wide
21 basis.

22 67. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
23 the balance of overtime compensation as required by California law, violates the provisions of
24 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
25 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
26 558 and/or 2699(a), (f), and (k).

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1 **FAILURE TO PAY MINIMUM WAGES**

2 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

3 68. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
4 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
5 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
6 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as “the
7 time during which an employee is subject to the control of an employer, and includes all the
8 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
9 Code Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

10 69. As set forth above, due to Defendants’ policies and/or practices of
11 understaffing while assigning heavy workloads, including pressure to meet production quotas,
12 Plaintiff and other non-party Aggrieved Employees performed work off-the-clock before and
13 after their scheduled shifts, including preparing their workstations and assisting other
14 employees. As a further example, as a result of Defendants’ security policy, Plaintiff and
15 other non-party Aggrieved Employees were required to wait off the clock for a managerial
16 employee to unlock the facility doors before they could clock in for their shifts on weekends.
17 Defendants failed to track this time that Plaintiff and other non-party Aggrieved Employees
18 spent working off-the-clock, and Plaintiff and other non-party Aggrieved Employees received
19 no compensation for this time.

20 70. Further, as also stated, due to Defendants’ policies and/or practices of
21 understaffing and assigning heavy workloads, and failing to schedule meal periods, Plaintiff
22 and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal
23 periods to which they were entitled and were required to work off-the-clock during meal
24 periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties
25 during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing
26 meal period premiums, upon information and belief, Defendants’ management adjusted
27 Plaintiff’s and other non-party Aggrieved Employees’ time records to reflect compliant meal
28 periods, even when meal periods were missed, short, and/or interrupted. Additionally, as

1 stated, Defendants' company-wide timekeeping system prevented Plaintiff and other non-
2 party Aggrieved Employees from entering time worked during meal periods because the
3 system locked out Plaintiff and other non-party Aggrieved Employees for a full 30 minutes.
4 Thus, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved
5 Employees for actual hours worked during unpaid meal periods because these hours were not
6 always correctly recorded.

7 71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
8 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
9 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
10 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
11 1194, 1197, and 1198.

12 72. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
13 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
14 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
15 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

16 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
17 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

18 73. At all relevant times herein set forth, the applicable IWC Wage Order and
19 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
20 other non-party Aggrieved Employees' employment by Defendants.

21 74. At all relevant times herein set forth, California Labor Code section 512(a)
22 provides that an employer may not require, cause, or permit an employee to work for a period
23 of more than five (5) hours per day without providing the employee with a meal period of not
24 less than thirty (30) minutes, except that if the total work period per day of the employee is
25 not more than six (6) hours, the meal period may be waived by mutual consent of both the
26 employer and the employee. Under California law, first meal periods must start after no more
27 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

28 75. At all relevant times herein set forth, California Labor Code sections 226.7,

1 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
2 meal period mandated by an applicable order of the IWC.

3 76. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
4 and the applicable IWC Wage Order also require employers to provide a second meal period
5 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
6 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
7 total hours worked is no more than twelve (12) hours, the second meal period may be waived
8 by mutual consent of the employer and the employee only if the first meal period was not
9 waived.

10 77. First, during the relevant time period, as stated above, Defendants had, and
11 continue to have, company-wide policies and/or practices of understaffing while assigning
12 heavy workloads, including imposing production quotas, which has resulted in a lack of meal
13 period coverage and prevented Plaintiff and other non-party Aggrieved Employees from
14 taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated,
15 Defendants had a company-wide practice and/or policy of failing to schedule meal periods,
16 which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of
17 their duties for compliant meal periods.

18 78. As a result, Plaintiff and other non-party Aggrieved Employees had to work
19 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
20 extended periods of time before taking meal periods. For example, as stated, several times per
21 week, Plaintiff had his meal periods interrupted by other employees requesting assistance,
22 which took 5-6 minutes per instance. Additionally, Plaintiff occasionally took his meal
23 periods late, after the fifth hour of work, due to the lack of coverage and heavy workload.

24 79. Second, as stated, on information and belief, because Defendants frowned upon
25 employees accruing meal period premiums, Defendants' management adjusted Plaintiff's and
26 other non-party Aggrieved Employees' time records to reflect compliant meal periods, even
27 when they did not receive a compliant meal period, in order to strictly limit the meal
28 premiums that Defendants would otherwise owe. As also stated, Defendants' company-wide

1 timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from
2 recording when their meal periods were shortened or interrupted, because the system locked
3 out Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal
4 period, and would not permit them to clock back in from a meal period before 30 minutes had
5 elapsed. As a result of these policies, Defendants falsified and deducted meal periods from
6 Plaintiff's and other non-party Aggrieved Employees' time records even when meal periods
7 were missed, short, interrupted, and/or late and thus systematically failed to correctly record
8 meal periods.

9 80. Third, Plaintiff and other non-party Aggrieved Employees worked shifts in
10 excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period.
11 For example, during his employment, Plaintiff worked shifts in excess of ten (10) or more
12 hours per day, but was not provided a second 30-minute meal period. Plaintiff and other non-
13 party Aggrieved Employees did not sign valid meal period waivers on days that they were
14 entitled to meal periods and were not relieved of all duties.

15 81. At all times herein mentioned, Defendants knew or should have known that, as
16 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
17 from being relieved of all duties to take timely, uninterrupted meal periods. Defendants
18 further knew or should have known that Defendants did not pay Plaintiff and other non-party
19 Aggrieved Employees all meal period premiums when meal periods were late, interrupted,
20 shortened, and/or missed.

21 82. Moreover, Defendants engaged in a company-wide practice and/or policy of
22 not paying all meal period premiums owed when compliant meal periods are not provided.
23 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
24 have not received premium pay for all missed, late, and interrupted meal periods.
25 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved
26 Employees premium pay for missed, late, and interrupted meal periods, Defendants did not
27 pay Plaintiff and other non-party Aggrieved Employees at the correct rate of pay for
28 premiums because Defendants systematically failed to include all forms of compensation,

1 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the
2 regular rate of pay. As a result, Defendants failed to provide Plaintiff and other non-party
3 Aggrieved Employees compliant meal periods in violation of California Labor Code sections
4 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

5 83. Defendants' conduct violates the applicable IWC Wage Order, and California
6 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
7 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
8 558 and/or 2699(a), (f), and (k).

9 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
10 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

11 84. At all relevant times herein set forth, the applicable IWC Wage Order and
12 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
13 non-party Aggrieved Employees' employment by Defendants.

14 85. At all relevant times, the applicable IWC Wage Order provides that "[e]very
15 employer shall authorize and permit all employees to take rest periods, which insofar as
16 practicable shall be in the middle of each work period" and that the "rest period time shall be
17 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
18 hours or major fraction thereof" unless the total daily work time is less than three and one-half
19 (3 ½) hours.

20 86. At all relevant times, California Labor Code section 226.7 provides that no
21 employer shall require an employee to work during any rest period mandated by an applicable
22 order of the California IWC. To comply with its obligation to authorize and permit rest
23 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
24 employer must "relinquish any control over how employees spend their break time, and
25 relieve their employees of all duties—including the obligation that an employee remain on
26 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
27 *Inc.*, 2 Cal. 5th 257, 273 (2016).

28 87. Pursuant to the applicable IWC Wage Order and California Labor Code section

226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

88. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide policies and/or practices of understaffing and assigning heavy workloads resulted in a lack of rest period coverage and prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

89. Furthermore, Defendants maintained a company-wide on-premises rest period policy, which effectively required that Plaintiff and/or other non-party Aggrieved Employees remain on the premises during their rest periods. Because Plaintiff and/or other non-party Aggrieved Employees were restricted from leaving Defendants' premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff and/or other non-party Aggrieved Employees during rest periods.

90. As a result of Defendants' practices and policies, Plaintiff and other non-party Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff missed some of his rest periods due to the heavy workload and Defendants' failure to schedule rest periods for employees.

91. Defendants have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not received premium pay for all missed rest periods. Alternatively, to the

1 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
2 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
3 other non-party Aggrieved Employees at the correct rate of pay for premium wages because
4 Defendants failed to include all forms of compensation, such as incentive pay,
5 nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay. As
6 a result, Defendants denied Plaintiff and other non-party Aggrieved Employees rest periods
7 and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7
8 and 516, and the applicable IWC Wage Order.

9 92. Defendants' conduct violates the applicable IWC Wage Order and California
10 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
12 558 and/or 2699(a), (f), and (k).

13 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
14 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

15 93. At all relevant times herein set forth, California Labor Code section 226(a)
16 provides that every employer shall furnish each of his or her employees an accurate and
17 complete itemized wage statement in writing, including, but not limited to, the name and
18 address of the legal entity that is the employer, the inclusive dates of the pay period, total
19 hours worked, and all applicable rates of pay.

20 94. At all relevant times, Defendants have knowingly and intentionally provided
21 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
22 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
23 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total
24 hours worked; net wages earned; and all applicable hourly rates in effect during the pay
25 period, including rates of pay for overtime wages and/or meal and rest period premiums, and
26 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
27 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

28 95. Because Defendants did not accurately record the time Plaintiff and other non-

1 party Aggrieved Employees spent working off-the-clock and deducted time from their records
2 for meal periods that were interrupted and/or missed (and therefore time for which they should
3 have been paid), Defendants did not list the correct amount of gross wages and net wages
4 earned by Plaintiff and other non-party Aggrieved Employees in compliance with sections
5 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
6 number of hours worked by Plaintiff and other non-party Aggrieved Employees, in violation
7 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the
8 pay period and the corresponding accurate number of hours worked at each hourly rate, in
9 violation of section 226(a)(9).

10 96. Moreover, because Defendants did not calculate Plaintiff's and other non-party
11 Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages
12 and/or meal and rest period premiums, Defendants did not list the correct amount of gross
13 wages in compliance with section 226(a)(1). For the same reason, Defendants failed to list the
14 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
15 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
16 of pay for overtime wages and/or meal and rest period premiums, in violation of section
17 226(a)(9).

18 97. The wage statement deficiencies also include, among other things, failing to list
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
21 for which employees were paid; failing to list the name of the employee and only the last four
22 digits of his or her social security number or an employee identification number other than a
23 social security number; failing to list the name and address of the legal entity that is the
24 employer; and/or failing to state all hours worked as a result of not recording or stating hours
25 worked off-the-clock.

26 98. California Labor Code section 1174(d) provides that "[e]very person employing
27 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
28 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
3 applicable piece rate paid to, employees employed at the respective plants or
4 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
5 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
6 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
7 as a result of failing to record the off-the-clock hours that they worked.

8 99. California Labor Code section 1198 provides that the maximum hours of work
9 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
10 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
11 employment of any employees for longer hours than those fixed by the order or under
12 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
13 Wage Order, employers are required to keep accurate time records showing when the
14 employee begins and ends each work period and meal period. During the relevant time
15 period, Defendants engaged in company-wide practices and/or policies of failing to record
16 actual hours worked, and thereby failed to keep accurate records of work period and meal
17 period start and end times for Plaintiff and other non-party Aggrieved Employees, in violation
18 of section 1198. Also, in light of Defendants’ failure to provide Plaintiff and other non-party
19 Aggrieved Employees with second 30-minute meal periods to which they were entitled,
20 Defendants kept no records of meal start and end times for second meal periods.

21 100. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
22 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
23 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

24 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

25 **VIOLATION OF LABOR CODE SECTION 204**

26 101. At all times relevant herein set forth, Labor Code section 204 provides that all
27 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
28 days, inclusive, of any calendar month, other than those wages due upon termination of an

1 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
2 the month during which the labor was performed. Labor Code section 204 further provides
3 that all wages earned by any person in any employment between the sixteenth (16th) and the
4 last day, inclusive, of any calendar month, other than those wages due upon termination of an
5 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
6 month.

7 102. At all times relevant herein, Labor Code section 204 provides that all wages
8 earned for labor in excess of the normal work period shall be paid no later than the payday for
9 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
10 204 provides that the requirements of this section are deemed satisfied by the payment of
11 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
12 seven (7) calendar days following the close of the payroll period.

13 103. During the relevant time period, Defendants willfully failed to pay Plaintiff and
14 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
15 wages, minimum wages, and/or meal and rest period premiums, within the time periods
16 specified by California Labor Code section 204.

17 104. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

19 **FAILURE TO PAY WAGES UPON TERMINATION**

20 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

21 105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
22 that if an employer discharges an employee, the wages earned and unpaid at the time of
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
24 her employment, his or her wages shall become due and payable not later than seventy-two
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the
27 time of quitting.

28 106. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved

1 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
2 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
3 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
4 leaving Defendants' employ.

5 107. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
6 who are no longer employed by Defendants their wages earned and unpaid at the time of
7 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
8 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
9 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
10 2699(a), (f), and (k).

11 **FAILURE TO MAINTAIN WORK TEMPERATURE PROVIDING REASONABLE**
12 **COMFORT**

13 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
14 **REGULATIONS TITLE 8, SECTION 11010 SUBDIVISION 15**

15 108. At all relevant times, California Labor Code section 1198 dictates that no
16 employer may employ an employee under conditions of labor that are prohibited by the
17 applicable IWC Wage Order. California Labor Code section 1198 further requires that "...
18 the standard conditions of labor fixed by the commission shall be the ... standard conditions
19 of labor for employees. The employment of any employee ... under conditions of labor
20 prohibited by the order is unlawful."

21 109. California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide
22 that "[t]he temperature maintained in each work area shall provide reasonable comfort
23 consistent with industrywide standards for the nature of the process and the work
24 performed If excessive heat or humidity is created by the work process, the employer
25 shall take all feasible means to reduce such excessive heat or humidity to a degree providing
26 reasonable comfort." California law requires an employer to endeavor to provide a safe and
27 healthy workplace (Cal. Code Regs. tit. 8, § 3203). Moreover, California Labor Code section
28 3396 provides that employers must take steps to protect workers when indoor work area

1 temperature equals or exceeds 82 degrees Fahrenheit when employees are present. These
2 steps include providing access to water and cool-down areas.

3 110. Upon information and belief, Defendants violated California Labor Code
4 section 1198 and California Code of Regulations, Title 8, section 11010(15), because
5 Defendants failed to maintain a temperature in work areas that provided reasonable comfort
6 consistent with industry-wide standards for the nature of the process and the work performed
7 and failed to take all feasible means to reduce excessive heat or humidity to a degree
8 providing reasonable comfort.

9 111. During the relevant time period, Plaintiff and other non-party Aggrieved
10 Employees were subjected to excessive heat resulting in temperatures equaling or exceeding
11 82 degrees Fahrenheit. Defendants failed to provide Plaintiff and other non-party Aggrieved
12 Employees with reasonable comfort by maintaining the indoor temperature within the range of
13 industry standards by providing adequate air conditioning, in violation of California Labor
14 Code section 1198 and IWC Wage Order No. 1-2001, subdivision 15. For example, Plaintiff
15 and other non-party Aggrieved Employees who were present in Defendants' facilities were not
16 provided sufficient air conditioning or fans, and would be required to work indoors at 90
17 degrees Fahrenheit or more.

18 112. Accordingly, Defendants failed to maintain in their work areas, a temperature
19 providing reasonable comfort for their employees, including Plaintiff and other non-party
20 Aggrieved Employees, in violation of California Labor Code section 1198 and California
21 Code of Regulations, Title 8, section 11010(15). Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 2699(a), (f), and (k).

24 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

25 **VIOLATION OF LABOR CODE SECTION 2802**

26 113. At all times herein set forth, California Labor Code section 2802 provides that
27 an employer must reimburse employees for all necessary expenditures and losses incurred by
28 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is

1 to prevent employers from passing off their cost of doing business and operating expenses on
2 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
3 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen
4 tools or equipment are required by the employer or are necessary to the performance of a job,
5 such tools and equipment shall be provided and maintained by the employer, except that an
6 employee whose wages are at least two (2) times the minimum wage provided herein may be
7 required to provide and maintain hand tools and equipment customarily required by the trade
8 or craft."

9 114. During the relevant time period, Plaintiff and other non-party Aggrieved
10 Employees were required to use their personal mobile devices, including, but not limited to,
11 cellular phones, and/or mobile data to carry out their job duties, but Defendants failed to
12 reimburse them for the costs of their work-related mobile device and/or mobile data expenses.
13 For example, Plaintiff would use his personal cellular phone to take photos of product and
14 send them to his supervisor to alert the supervisor about a defect or ask a question regarding
15 the product and/or repair procedures. Although Defendants required Plaintiff and other non-
16 party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to
17 carry out their work-related responsibilities, Defendants failed to reimburse them for these
18 costs.

19 115. Defendants could have provided Plaintiff and other non-party Aggrieved
20 Employees with the actual equipment for use on the job, such as company mobile devices.
21 Or, Defendants could have reimbursed employees for their mobile device usage. Instead,
22 Defendants passed these operating costs onto Plaintiff and other non-party Aggrieved
23 Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
24 wage.

25 116. Defendants' company-wide policy and/or practice of not reimbursing
26 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
27 and other non-party Aggrieved Employees violates California Labor Code section 2802.
28 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil

penalties pursuant to Labor Code sections 2699(a), (f), and (k).

**FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF
EMPLOYMENT**

VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)

117. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

118. During the relevant time period, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with the overtime rate(s) of pay in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to Plaintiff is blank where the aforementioned wage information should be filled in.

119. Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
3 judgment against Defendants, jointly and severally, as follows:

4 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
5 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
6 amount.

7 **As to the First Cause of Action**

8 2. That the Court declare, adjudge, and decree that Defendants violated the
9 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
10 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
11 (by failing to include all forms of remuneration in the regular rate of pay for purposes of
12 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
13 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
14 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
15 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
17 earned wages upon termination); 204 (by failing to timely pay all earned wages during
18 employment); 1198 and the applicable IWC Wage Order (by failing to maintain a reasonable
19 work temperature); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing
20 to provide written notice of information material to employment);

21 3. For civil penalties pursuant to the California Labor Code, including sections
22 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code
23 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
24 2802, and 2810.5;

25 4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
26 2699(k) to bring Defendants into compliance with the requirements of California Labor Code
27 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
28 2802, and 2810.5;

1 5. For attorneys' fees and for costs pursuant to California Labor Code section
2 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
4 1197, 1198, 2802, and 2810.5;

5 6. For pre-judgment interest and post-judgment interest as provided by law; and

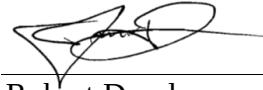
6 7. For such other and further relief as the Court may deem equitable and
7 appropriate.

8
9 Dated: March 20, 2025

Respectfully submitted,

Capstone Law APC

10
11
12 By:



Robert Drexler

Jonathan Lee

Robert Myong

Attorneys for Plaintiff Marquis Herron

EXHIBIT “1”



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310.556.4811 Main | 310.943.0396 Fax

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January 13, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Marquis Herron v. Townsend Industries, Inc., et al.*

Dear PAGA Administrator:

This office represents Marquis Herron in connection with his claims under the California Labor Code. Mr. Herron was an employee of TOWNSEND INDUSTRIES, INC. and/or KNIT-RITE, LLC. For the purpose of this letter, Mr. Herron collectively refers to these entities as "TOWNSEND."

The employers may be contacted directly at the addresses below:

TOWNSEND INDUSTRIES, INC.
4615 SHEPARD STREET
BAKERSFIELD, CA 93313

KNIT-RITE, LLC
120 OSAGE AVE
KANSAS CITY, KS 66105

Mr. Herron intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Herron seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TOWNSEND as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TOWNSEND employed Mr. Herron as an hourly paid, non-exempt employee from approximately October 2020 to August 2024. Mr. Herron worked for TOWNSEND as a Production Technician I at its manufacturing facility in Bakersfield, California. During his employment, Mr. Herron typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Herron was compensated approximately \$18.83 per hour. His job duties included, without limitation, manufacturing braces which involved polishing, repairing, grinding, and custom fitting them.

TOWNSEND committed each of the following Labor Code violations against Mr. Herron, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

TOWNSEND’s Company-Wide and Uniform Payroll and HR Practices

TOWNSEND INDUSTRIES, INC. is a California corporation while KNIT-RITE, LLC is a Delaware limited liability company. Together, they design and manufacture medical equipment such as prescription-quality braces. Upon information and belief, TOWNSEND maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Bakersfield, California, or Kansas City, Kansas, for all non-exempt, hourly paid employees working for TOWNSEND in California, including Mr. Herron and other aggrieved employees. At all relevant times, TOWNSEND issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Herron and other aggrieved employees, regardless of their location or position.

Upon information and belief, TOWNSEND maintains a centralized Payroll department at its corporate headquarters in Bakersfield, California, or Kansas City, Kansas, which processes payroll for all non-exempt, hourly paid employees working for TOWNSEND in California, including Mr. Herron and other aggrieved employees. Further, TOWNSEND issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Herron and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, TOWNSEND utilized the same methods and formulas when calculating wages due to Mr. Herron and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TOWNSEND willfully failed to pay all overtime wages owed to Mr. Herron and other aggrieved employees. During the relevant time period, Mr. Herron and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Herron’s experience and counsel’s review of those records currently available relating to Mr. Herron’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Herron reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, TOWNSEND had, and continues to have, practices and/or policies of understaffing and assigning heavy workloads, including imposing production quotas, which led Mr. Herron and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, Mr. Herron arrived 10-15 minutes early to his shifts to prepare his workstation for the day before clocking in, which he felt pressured to do, so that he could start production and work toward meeting his quotas immediately upon clocking in. As another example, at TOWNSEND's direction, Mr. Herron would sometimes assist other employees for up to 15 minutes after clocking out from his shifts. Thus, TOWNSEND failed to track all of the time that employees spent performing work-related tasks before and after their shifts, and Mr. Herron and other aggrieved employees received no compensation for this time.

Second, TOWNSEND had, and continues to have, a company-wide security policy of allowing only certain employees to carry keys to TOWNSEND's facility. Specifically, only managerial employees were issued keys to access the facility at any given time. In adherence with this policy, upon arriving to work for their scheduled shift start-times on the weekends, Mr. Herron and other aggrieved employees were required to wait for up to 45 minutes for a managerial employee to arrive at TOWNSEND's premises and unlock the door in the mornings, before they could enter and clock in for their shifts. This occurred more than 10 times throughout 2024. As a result, Mr. Herron and other aggrieved employees were subject to TOWNSEND's control before they had clocked in for their shifts but were not compensated for this time.

Third, as stated, TOWNSEND had, and continues to have, company-wide policies and/or practices of understaffing, such that there were too few employees to handle the workload, while also pressuring employees to meet production quotas. TOWNSEND's policies and/or practices resulted in a failure to provide Mr. Herron and other aggrieved employees with adequate meal period coverage, and thus, Mr. Herron and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. TOWNSEND also had a practice of failing to schedule meal periods, which further caused Mr. Herron and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Herron had his meal periods interrupted by other employees asking questions and requesting assistance, which took 5-6 minutes per instance and would occur a few times a week. Consequently, Mr. Herron and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Further, on information and belief, because TOWNSEND frowned upon employees accruing meal period premiums, TOWNSEND's management adjusted Mr. Herron's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that TOWNSEND would otherwise owe. Additionally, TOWNSEND's company-wide timekeeping system prevented Mr. Herron and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Herron and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, TOWNSEND did not record all hours worked during meal periods, and Mr. Herron and other aggrieved employees performed work during meal periods for which they were not paid.

TOWNSEND knew or should have known that as a result of these company-wide practices and/or policies, Mr. Herron and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts, and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Herron and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Herron and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, TOWNSEND did not pay Mr. Herron and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, TOWNSEND paid Mr. Herron and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TOWNSEND failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Herron and other aggrieved employees worked overtime and received these other forms of pay, TOWNSEND failed to pay all overtime wages by paying a lower overtime rate than required.

For example, TOWNSEND paid Mr. Herron and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Herron's and other aggrieved employees' wage statements as "Bonus" and "Gifts." During pay periods that Mr. Herron and other aggrieved employees were paid overtime wages, TOWNSEND did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Herron's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, TOWNSEND paid Mr. Herron and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. TOWNSEND's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Herron and other aggrieved employees on a company-wide basis.

TOWNSEND's failure to pay Mr. Herron and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, due to TOWNSEND's policies and/or practices of understaffing while assigning heavy workloads, including pressure to meet production quotas, Mr. Herron and other aggrieved employees performed work off-the-clock before and after their scheduled shifts, including preparing

their workstations and assisting other employees. As a further example, as a result of TOWNSEND's security policy, Mr. Herron and other aggrieved employees were required to wait off the clock for a managerial employee to unlock the facility doors before they could clock in for their shifts on weekends. TOWNSEND failed to track this time that Mr. Herron and other aggrieved employees spent working off-the-clock, and Mr. Herron and other aggrieved employees received no compensation for this time.

Further, as also stated, due to TOWNSEND's policies and/or practices of understaffing and assigning heavy workloads, and failing to schedule meal periods, Mr. Herron and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period premiums, upon information and belief, TOWNSEND's management adjusted Mr. Herron's and other aggrieved employees' time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Additionally, as stated, TOWNSEND's company-wide timekeeping system prevented Mr. Herron and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Herron and other aggrieved employees for a full 30 minutes. Thus, TOWNSEND systematically failed to pay Mr. Herron and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, TOWNSEND did not pay minimum wages for all hours worked by Mr. Herron and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, TOWNSEND did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, TOWNSEND regularly failed to pay at least minimum wages to Mr. Herron and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional

hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated above, TOWNSEND had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including imposing production quotas, which has resulted in a lack of meal period coverage and prevented Mr. Herron and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, TOWNSEND had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Herron and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Herron and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, several times per week, Mr. Herron had his meal periods interrupted by other employees requesting assistance, which took 5-6 minutes per instance. Additionally, Mr. Herron occasionally took his meal periods late, after the fifth hour of work, due to the lack of coverage and heavy workload.

Second, as stated, on information and belief, because TOWNSEND frowned upon employees accruing meal period premiums, TOWNSEND's management adjusted Mr. Herron's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal premiums that TOWNSEND would otherwise owe. As also stated, TOWNSEND's company-wide timekeeping system prevented Mr. Herron and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Herron and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. As a result of these policies, TOWNSEND falsified and deducted meal periods from Mr. Herron's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late and thus systematically failed to correctly record meal periods.

Third, Mr. Herron and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during his employment, Mr. Herron worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Mr. Herron and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, TOWNSEND knew or should have known that, as a result of these policies, Mr. Herron and other aggrieved employees were prevented from being relieved of all duties to take timely, uninterrupted meal periods. TOWNSEND further knew or should have known that TOWNSEND did not pay Mr. Herron and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, TOWNSEND engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Herron and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that TOWNSEND did pay Mr. Herron and other aggrieved employees premium pay for missed, late, and interrupted meal

periods, TOWNSEND did not pay Mr. Herron and other aggrieved employees at the correct rate of pay for premiums because TOWNSEND systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, TOWNSEND failed to provide Mr. Herron and other aggrieved employees compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

Accordingly, TOWNSEND failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, TOWNSEND regularly failed to authorize and permit Mr. Herron and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TOWNSEND's company-wide policies and/or practices of understaffing and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Herron and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. TOWNSEND also failed to schedule rest periods, which, coupled with TOWNSEND's failure to provide adequate rest period coverage, further led to Mr. Herron and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, TOWNSEND maintained a company-wide on-premises rest period policy, which effectively required that Mr. Herron and/or other aggrieved employees remain on the premises during their rest periods. Because Mr. Herron and/or other aggrieved employees were restricted from leaving TOWNSEND's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, TOWNSEND effectively maintained control over Mr. Herron and/or other aggrieved employees during rest periods.

As a result of TOWNSEND's practices and policies, Mr. Herron and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Herron missed some of his rest periods due to the heavy workload and TOWNSEND's failure to schedule rest periods for employees.

TOWNSEND has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Herron and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TOWNSEND did pay Mr. Herron and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, TOWNSEND did not pay Mr. Herron and other aggrieved employees at the correct rate of pay for premium wages because TOWNSEND failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay. As a result, TOWNSEND denied Mr. Herron and other aggrieved employees rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

Accordingly, TOWNSEND failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TOWNSEND has not provided Mr. Herron and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TOWNSEND has knowingly and intentionally provided Mr. Herron and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TOWNSEND issued uniform wage statements to Mr. Herron and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, TOWNSEND violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because TOWNSEND did not accurately record the time Mr. Herron and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were

interrupted and/or missed (and therefore time for which they should have been paid), TOWNSEND did not list the correct amount of gross wages and net wages earned by Mr. Herron and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TOWNSEND failed to accurately list the total number of hours worked by Mr. Herron and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because TOWNSEND did not calculate Mr. Herron's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, TOWNSEND did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, TOWNSEND failed to list the correct amount of net wages in violation of section 226(a)(5). TOWNSEND also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), TOWNSEND willfully failed to maintain accurate payroll records for Mr. Herron and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, TOWNSEND engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Herron and other aggrieved employees, in violation of section 1198. Also, in light of TOWNSEND's failure to provide Mr. Herron and other aggrieved employees with second 30-minute meal periods to which they were entitled, TOWNSEND kept no records of meal start and end times for second meal periods.

Because TOWNSEND failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Herron and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Herron and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, TOWNSEND failed to pay Mr. Herron and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

TOWNSEND willfully failed to pay Mr. Herron and other aggrieved employees who are no longer employed by TOWNSEND the earned and unpaid wages set forth above, including but not limited

to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving TOWNSEND's employ.

Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.” California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs. tit. 8, § 3203). Moreover, California Labor Code section 3396 provides that employers must take steps to protect workers when indoor work area temperature equals or exceeds 82 degrees Fahrenheit when employees are present. These steps include providing access to water and cool-down areas.

Upon information and belief, TOWNSEND violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15), because TOWNSEND failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

During the relevant time period, Mr. Herron and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 90 degrees Fahrenheit. TOWNSEND failed to provide Mr. Herron and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and in IWC Wage Order No. 1-2001, subdivision 15. For example, Mr. Herron and other aggrieved employees who were present in TOWNSEND's facilities were not provided sufficient air conditioning or fans, and would be required to work indoors at 90 degrees Fahrenheit or more. Accordingly, TOWNSEND failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, Mr. Herron and other aggrieved employees, in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15).

Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, Mr. Herron and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but TOWNSEND failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Herron would use his personal cellular phone to take photos of product and send them to his supervisor to alert the supervisor about a defect or ask a question regarding the product and/or repair procedures. Although TOWNSEND required Mr. Herron and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, TOWNSEND failed to reimburse them for these costs.

TOWNSEND could have provided Mr. Herron and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices. Or, TOWNSEND could have reimbursed employees for their mobile device usage. Instead, TOWNSEND passed these operating costs onto Mr. Herron and other aggrieved employees. At all relevant times, Mr. Herron did not earn at least two (2) times the minimum wage.

Thus, TOWNSEND had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Herron and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the

use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

During the relevant time period, TOWNSEND failed to provide Mr. Herron and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, TOWNSEND failed to provide Mr. Herron and other aggrieved employees with the overtime rate(s) of pay in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that TOWNSEND provided to Mr. Herron is blank where the aforementioned wage information should be filled in. TOWNSEND's failure to provide Mr. Herron and other aggrieved employees with written notice of basic information regarding their employment with TOWNSEND is in violation of Labor Code section 2810.5.

Mr. Herron and other aggrieved employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TOWNSEND into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." TOWNSEND, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Herron's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Herron seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Herron, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against TOWNSEND for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Herron seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel", is shown on a light-colored rectangular background.

Ninel Kocharyan

Copy: TOWNSEND INDUSTRIES, INC. (via U.S. Certified Mail); KNIT-RITE, LLC (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2265 1301

TOWNSEND INDUSTRIES, INC.
4615 SHEPARD STREET
BAKERSFIELD, CA 93313

U.S. Postal Service[™]
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Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee \$
Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
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TOWNSEND

TOWNSEND INDUSTRIES, INC.
4615 SHEPARD STREET
BAKERSFIELD, CA 93313

PS Form 3811, April 2013 PSN 7530-02-000-9053 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Print your name and address on the back of the mailpiece.

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
X
- B. Received by (Printed Name)
- C. Date of Delivery
- Agent
□ Addressee

delivery address different from item 1? ☐ Yes
YES, enter delivery address below: ☐ No

TOWNSEND INDUSTRIES, INC.
4615 SHEPARD STREET
BAKERSFIELD, CA 93313



9590 9402 7706 2122 1528 21

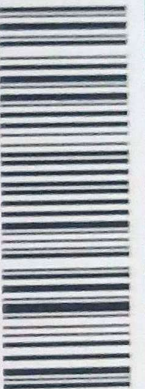
2. Article Number (Transfer from service label)

7022 2410 0000 2265 1301

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



7022 2410 0000 2265 1295

KNIT-RITE, LLC
120 OSAGE AVE
KANSAS CITY, KS 66105

7022 2410 0000 2265 1295

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

Certified Mail Fee \$
Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
Postmark

KNIT-RITE, LLC
120 OSAGE AVE
KANSAS CITY, KS 66105

PS Form 3800, April 2015 PSN 7530-02-000-9053

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

KNIT-RITE, LLC
120 OSAGE AVE
KANSAS CITY, KS 66105

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
B. Received by (Printed Name)
C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No



9590 9402 7706 2122 1528 38

2. Article Number (Transfer from carrier's label)

7022 2410 0000 2265 1295

PS Form 3811, July 2020 PSN 7530-02-000-9053

Service Type
☐ Adult Signature
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Mail
☐ Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

ORDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.
Print your name and address on the reverse
so that we can return the card to you.

TOWNSEND INDUSTRIES, INC.
4615 SHEPARD STREET
BAKERSFIELD, CA 93313



9590 9402 7706 2122 1528 21

2. Article Number (Transfer from service label)

7022 2410 0000 2265 1301

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]* 1/20/01 C/S

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

1-15-05

delivery address different from item 1? ☐ Yes

YES, enter delivery address below: ☐ No

Service Type

Signature

☒ Adult Signature Restricted Delivery

☐ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

Mail

Mail Restricted Delivery

(00)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

1.

KNIT-RITE, LLC
120 OSAGE AVE
KANSAS CITY, KS 66105



9590 9402 7706 2122 1528 38

2. Article Number (Transfer from service label)

7022 2410 0000 2265 1295

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
 Mail Restricted Delivery
 (over \$500)

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **March 20, 2025**, I served the document described as **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Danielle Hultenius Moore
dmoore@fisherphillips.com
A.J. Sparagna
asparagna@fisherphillips.com
Lauren M. Guggisberg
lguggisberg@fisherphillips.com
FISHER & PHILLIPS LLP
4747 Executive Drive, Suite 1000
San Diego, California 92121
Telephone: (858) 597-9600
Facsimile: (858) 597-9601

Attorneys for Defendants
TOWNSEND INDUSTRIES, INC. and -
RITE, LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via OneLegal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **March 20, 2025**, at Los Angeles, California.

Sophia Flores
Type/Print Name


Signature