

1 ZACHARY CANTOR (SBN: 270507)
2 Santa Monica, CA 90403
3 T. 310.393.6620
4 F. 310.393.6680
5 E. Zachary@CantorLawyers.com
6 Attorneys for Plaintiffs,
7 on behalf of themselves and Aggrieved Employees

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**SHANE KISMAN, an Individual;
JASON KILLINGER, an
Individual;**

Plaintiffs,

v.

**UNITED PARCEL SERVICE,
INC., a California Corporation;**

Defendant.

CASE NO.

**COMPLAINT FOR REPRESENTATIVE
ACTION UNDER LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT (“PAGA”)
[Labor Code §§2698, et seq.] for:**

- A. Failure to Provide Meal Periods;**
- B. Failure to Provide Rest Periods;**
- C. Failure to Pay Reporting Time Pay**
- D. Failure to Pay Minimum Wages**
- E. Failure to Pay Overtime Wages**
- F. Derivative Failure to Timely Furnish
Accurate Itemized Wage Statements**
- G. Independent Failure to Timely Furnish
Accurate Itemized Wage Statements**
- H. Derivative Violations of Labor Code § 203**
- I. Independent Violations of Labor Code §
203 re: Late Checks**
- J. Violation of Occupational Safety and
Health (Labor Code 6400)**
- K. Violation of Occupational Safety and
Health (Labor Code 6401)**
- L. Violation of Occupational Safety and
Health (Labor Code 6401.7)**
- M. Violation of Occupational Safety and
Health (Labor Code 6402)**
- N. Violation of Occupational Safety and
Health (Labor Code 6406)**

1 Plaintiffs SHANE KISMAN AND JASON KILLINGER ("Named Plaintiffs"), on
2 behalf of themselves, on behalf of all aggrieved employees, and pursuant to
3 California Labor Code § 2698 et seq. on behalf of the State of California and
4 general public as Private Attorneys General (collectively "Plaintiffs"), complain of
5 Defendant, and each of them, and for the causes of action stated herein, allege as
6 follows:

7 **INTRODUCTION AND NATURE OF THE ACTION**

- 8 1. This is a representative action seeking recovery of civil penalties under the
9 Private Attorneys General Act of 2004 ("PAGA"), California Labor Code
10 ("Labor Code") §§2698, et seq. PAGA permits "aggrieved employees" to bring
11 a lawsuit as a representative action on behalf of themselves and other aggrieved
12 current and former employees to recover civil penalties for Defendant's
13 violations of the Labor Code, and all applicable Industrial Welfare Commission
14 ("IWC") Orders, including IWC Wage Order 4-2001.
- 15 2. The acts complained of herein occurred, occur and will occur, at least in part,
16 within the time period from one (1) year preceding the filing of the PAGA
17 notice herein, up to and through the time of trial for this matter although this
18 should not automatically be considered the statute of limitations for any cause
19 of action herein.
- 20 3. The relevant job titles held by the aggrieved employees in this action are
21 Defendants' hourly employees employed during the relevant time period
22 (including any of Defendants' job positions with substantially similar titles
23 and/or duties, including but not limited to drivers) (hereinafter, the "aggrieved
24 employees"), who performed the majority of their work in California (see *Ward*
25 *v. United Airlines, Inc.*, 9 Cal. 5th 732, 754 (2020))["[W]hether the employee's
26 principal place of work is in California...That test is certainly satisfied when
27 the employee spends the majority of his or her working hours in California."];
28 see *Oman v. Delta Air Lines, Inc.*, 9 Cal.5th 762 (2020) (Employees are entitled to

1 California-compliant wage statements if California is the principal place of their
2 work); also see *Gulf Offshore Logistics, LLC v. Superior Court*, 58 Cal. App.
3 5th 264 (2020), review denied, ordered not published, (Cal. Mar. 24, 2021)
4 (California labor code applied re wage violations because the non-resident crew
5 members' work was performed mainly in California.)

6 4. Any differences in job activities between the different aggrieved employees
7 were and are legally insignificant to the issues presented by this action.

8 5. This Complaint seeks penalties under PAGA for violations of the Labor Code
9 described below, on behalf of Plaintiffs and all hourly employees (including,
10 but not limited to drivers) employed by Defendant UNITED PARCEL
11 SERVICE, INC. (hereinafter "UPS"), and its controlled and related entities and
12 subsidiaries, (collectively "DEFENDANTS"), currently or at any time within
13 one year of the mailing of the PAGA letter.

14 6. This Complaint alleges DEFENDANTS' various violations of California Labor
15 Code Sections (including, but not limited to, Sections 201-203, 204, 206, 206.5,
16 216, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.6, 226.7, 229, 233, 234, 256,
17 350, 351, 353, 356, 432, 450, 510, 511, 512, 515, 558, 558.1, 1174, 1174.5,
18 1175, 1182.11, 1182.12, 1185, 1194, 1194.2, 1195, 1197, 1197.1, 1197.5,
19 1198.5, 1199, 2751, 2802, 6300, 6301, 6311, 6400, 6401, 6402, 6403, 6401.7,
20 6404, 6406, 6423, 6424, 6425, 6426, 6427, 6428, 6429, 6430, 6431, 6432, 6433),
21 violations of the applicable Wage Orders issued by the California Industrial
22 Welfare Commission as Wage Order 5-2001, including, but not limited to,
23 Sections 3, 4, 5, 7, 8, 9(A), 11, 12, 13 and 20 ("IWC Wage Order 5"), violations
24 of the unlawful business practice provisions of [California Business and](#)
25 [Professions Code § 17000](#), et seq. and [§ 17200](#), et seq., and violations of related
26 common law.

27 7. The acts complained of herein occurred, occur and will occur, at least in part,
28 within the time period from one year preceding the mailing and submission of

1 the Notice Letter, up to and through the time of trial for this matter (the
2 "Liability Period").

- 3 8. Such policies and practices, as described herein, violate the Labor Code, and
4 therefore trigger civil penalties. Therefore, Plaintiffs, on behalf of all aggrieved
5 employees, bring this representative PAGA action pursuant to violations of the
6 Labor Code, seeking penalties for the violations alleged herein, reasonable
7 attorney's fees and costs, and other relief as deemed proper.

8 **I. PARTIES**

9 **A. PLAINTIFFS**

- 10 9. Plaintiffs SHANE KISMAN and JASON KILLINGER ("KISMAN and
11 KILLINGER") are residents of the State of Nevada. KISMAN AND
12 KILLINGER are informed and believes and on that basis alleges that, within
13 the Liability Period, KISMAN AND KILLINGER was employed by UPS
14 during the relevant time period, and KILLINGER continues to work for
15 Defendants. Plaintiffs performed the majority of their work in California (see
16 *Ward v. United Airlines, Inc.*, 9 Cal. 5th 732, 754 (2020)["[W]hether the
17 employee's principal place of work is in California...That test is certainly
18 satisfied when the employee spends the majority of his or her working hours in
19 California."]; see *Oman v. Delta Air Lines, Inc.*, 9 Cal.5th 762 (2020)
20 (Employees are entitled to California-compliant wage statements if California is
21 the principal place of their work); also see *Gulf Offshore Logistics, LLC v.*
22 *Superior Court*, 58 Cal. App. 5th 264 (2020), review denied, ordered not
23 published, (Cal. Mar. 24, 2021) (California labor code applied re wage
24 violations because the non-resident crew members' work was performed mainly
25 in California.)

26 **B. DEFENDANTS**

- 27 10. Throughout the Liability Period, and at all times material herein, Defendant
28 UPS owned, operated and managed multiple hub locations in California, and

extraterritorial hubs whose drivers operated largely in California. For example, the UPS hub based in Reno, Nevada, sent drivers on runs or routes through and into California (to California UPS hubs such as in Independence, CA, Ontario, CA, Sacramento, CA, and others), with the vast majority of the drivers' work being performed in California. Similarly, UPS hubs, such as the hub in Lathrop, CA sent drivers through California with their destination being the Reno, NV hub.

C. JURISDICTION AND VENUE

11. The Federal District Court, Central District of California, has jurisdiction in this matter due to Defendants' violations of applicable regulations, statutes and laws, including IWC Wage Order 5, California Labor Code, California Code of Civil Procedure, California Civil Code, California Business and Professions Code, and related common law principles within not just the State of California but also specifically within the Central District, the total potential penalties far exceeds the jurisdictional minimum.

12. Venue in the Federal District Court, Central District of California, has already been deemed proper in a related action (e.g. re Plaintiff KISMAN'S individual wrongful termination, retaliation, discrimination claims) as per Judge Andre Birotte, Jr.'s ruling (*Kisman v. UPS, Inc.*, 2021 U.S. Dist. LEXIS 213027 (2021) (writ to 9th Cir. Court of Appeal denied) [Denying Defendant's motion to transfer to Nevada after considering "the threshold question of whether the case could have been brought in another judicial district for purposes of Defendant's *forum non conveniens* argument."].)

13. Diversity Jurisdiction exists because Defendant UPS is an Ohio based corporation.

FACTUAL BACKGROUND

14. On or about April 7, 1995, Plaintiff KISMAN was hired as a fulltime package delivery driver. KISMAN transferred to the Feeder division in or about 1996.

1 His route for the five years prior to his termination was Reno, Nevada to
2 Ontario, California—and almost all of his driving on the route took place in
3 California. Many of his previous routes were also mainly in California. Kisman
4 continued to be a feeder driver until his termination in March 2021. (Kisman
5 still has standing to bring this action per *Johnson v. Maxim Healthcare Servs.,*
6 *Inc.*, 66 Cal. App. 5th 924 (2021) [Employee was an "aggrieved employee" with
7 standing to pursue her PAGA claim, as she was employed by the employer and
8 she personally suffered at least one Labor Code violation on which the PAGA
9 claim was based; and her individual claim might be time-barred did not nullify
10 the alleged Labor Code violations nor strip her of her standing to pursue PAGA
11 remedies.].)

12 15. Plaintiff KILLINGER is currently a feeder driver based out of the UPS Reno,
13 NV hub.¹ His main route is usually Reno, NV to Sacramento, CA. KILLINGER
14 has filled in as a temporary driver for the Reno, NV to Ontario, CA route—and
15 experienced the same conditions and requirements as KISMAN during the time
16 KILLINGER drove the route. Indeed, in December 2021 while driving the
17 Reno, NV to Ontario, CA route, KILLINGER called manager Robert McCrae
18 to ask how the regular route drivers were able to make service with such a tight
19 schedule, McCrae responded, “They don’t exactly do it by the book.” To be
20 sure, the schedule for the route was and continues to be such that in order to
21 make service, the drivers must speed whenever possible—well above speed
22 limits for commercial vehicles. KILLINGER realized it was impossible to make
23 service without speeding.

24 16. UPS has written safety policies, but UPS management looks the other way
25 and even actively encourages drivers not to follow the policies, for reasons
26

27 ¹ So any argument re Kisman’s standing is moot, regardless of the Appellate Court’s holding in
28 *Johnson v. Maxim Healthcare Servs., Inc.*

1 such as making the truck route deliveries on time, making quotas, making
2 service.

3 17. UPS management team was aware and continues to be aware of numerous
4 violations, and continues to place the equipment back on the road endangering
5 its employees and the public in which they operate. These flagrant safety
6 violations continue to present day.

7 18. The safety violations include but are not limited to: condoned use of red-tagged
8 equipment deemed not street legal, condoned falsification of records,
9 inadequate training and compliance, falsification of trailer volume percentages
10 and related documentation, Electronic Logging Device (ELD) inaccuracy
11 issues, and wage and safety violations (needing to speed) related to unsafe route
12 completion times from Reno, NV to Ontario, CA and other premium runs.

13 19. Note: the Reno, NV to Ontario, CA is not the only run that has too tight a time
14 schedule and requires the drivers to speed and/or skip meal breaks. Another
15 example is the Reno, CA to Independence, CA run.

16 20. Premium runs (quick service for a large customer) generally require the safety
17 and wage violations, but such is not necessarily limited to premium runs only.

18 21. It was well known by all management that Reno, NV to Ontario, CA runs had
19 to leave on time and that the drivers had to exceed the speed limits whenever
20 possible in order to make service and not miss the plane in Ontario, CA. It was
21 well known that the drivers would need to “cook the books” in order to make
22 service. The term “cook the books” means to falsify your DOT logs and to drive
23 during mandatory 30-minute break or meal.

24 22. For example, the last two Reno to Ontario runs each day were scheduled to
25 depart at 1800 and 1815 respectively due to arrive at 2:45am and 3:00am. At an
26 average speed of 48 mph driving 469, which is the UPS matrix used for
27 expedited loads (premium), it would take 9.77 hours with a meal. So, if a driver
28 actually was able to leave on time, he could not actually arrive until after

1 4:15am under perfect conditions. This does not take into account excess hills,
2 mountains, and numerous cities with reduced speeds or bad weather or road
3 construction.

4 23. In some instances, management would direct the repair/maintenance shop to
5 turn up the engine governor (which restricts the engine from accelerating past a
6 certain illegal speed), so that the tractors could make the run time by allowing
7 the driver's tractors to accelerate to 72 mph. Note: down hill speeds could be in
8 excess of 85 mph—and speeds in excess of 15 mph over the speed limit are *per*
9 *se* reckless driving.

10 24. The documentation showing this conduct is simple and easy to review, if UPS
11 were interested in auditing and correcting the required speed violations. But, no
12 such efforts have been made. A review of time records, ELD records,
13 tachometer charts, DVIR records would easily show the consistent violations.

14 25. In addition, some of the run loads contained hazardous materials that were not
15 properly designated and/or secured and/or managed.

16 26. Regarding the meal breaks, the ELD could be manipulated so that the driver
17 could stop and log a meal, but then continue driving through the meal. This was
18 necessary to make service for the run in addition to speeding. There were also
19 many occasions where management would facilitate or condone the falsification
20 of the time records.

21 27. KISMAN spoke openly around all managers and dispatchers never to hide the
22 fact that the drivers were required to go above and beyond to make these runs
23 work—and to violate the law.

24 28. In fact, KISMAN followed the rules and guidelines on one occasion to prove a
25 point, and, as a result, he arrived at 4:30 am—missing service and the plane for
26 the Reno to Ontario run. KISMAN asked management do a time study or
27 performance review, so that they could document the times. He went as far as to
28 ask the Union to send a letter to Division Manager Phil Cote requesting this

1 performance review. KISMAN'S direct supervisor did schedule a ride along
2 and was prepared to do a time study with KISMAN, but was instructed by Phil
3 Cote that he could not do a time study or performance review for KISMAN.

4 29. Phil Cote clearly wanted to prevent any sort of a time study being completed.

5 And it was clear that Phil Cote did not want documented and demonstrated the
6 illegality of the Reno to Ontario run time schedule.

7 30. Phil Cote instituted a campaign of harassment and retaliation against KISMAN
8 as a result.

9 31. Further, on-road supervisors did not meet the standard required during their
10 training process; and Phil Cote would regularly override on-road supervisor
11 trainers' decisions to fail them and instead push them through DTS school—and
12 after completing DTS school they would be authorized to train other drivers,
13 despite their lack of knowledge and skills. Phil Cote's decisions have had an
14 adverse effect on the entire training process at UPS. The result is that traffic
15 collisions and other safety incidents have noticeably been on the rise while the
16 caliber of training has declined.

17 32. Falsification of trailer volume percentage logs: Several UPS Hubs, including
18 but not limited to Lathrop, CA, falsify trailer volume percentage logs. For
19 example, it is common for UPS to simply document that the trailers are at 100%
20 capacity. One significant problem arises when the trailer is not in fact at 100%
21 capacity and a driver is pulling multiple trailers, where the heavier trailer is
22 placed at the back instead of the front. The heavier trailer should be placed
23 ahead of the lighter trailer(s) to make sure the driver has maximum control over
24 the load while driving. Falsification of the load volume percentages is
25 dangerous because a driver pulling two trailers is more likely to lose control of
26 the vehicle where the back trailer is much heavier.

27 33. Regarding red tagged vehicles: Dispatch needed trucks for the drivers to
28 complete their runs while at the same time the shop needed the trucks in order

1 to complete the repairs. The drivers were put in the middle between the shop
2 and dispatch. Many times, a red-tagged tractor would be “scheduled” for
3 repairs, which would remove it from the red-tagged category—and allow
4 drivers to continue driving it, because UPS was short equipment. But,
5 importantly, the tractors were still unsafe to drive, because the “scheduled”
6 repairs had not been made.

7 34.Also, UPS required or allowed drivers to drive longer and beyond the DOT and
8 FMCSA mandated maximum work hours. For example, numerous drivers and
9 supervisors who work or operate businesses outside UPS employment were not
10 required to log work hours, so that their allotted drive time for UPS work would
11 not be affected. There were also instances where drivers were required to drive
12 back to back runs, despite lack of rest/sleep. These practices are unsafe, as the
13 maximum hours mandated by DOT and FMCSA are intended to allow drivers
14 sufficient rest to drive alert and safely.

15 35.In addition, UPS employees were required to perform a wellness check before
16 entering the premises but were not paid for that time.

17 36.UPS also sometimes required aggrieved employees to respond to text messages,
18 phone calls and emails, and the time was unpaid. Similarly, UPS required
19 employees to perform work outside UPS, such as for Fairs or events for United
20 Way and incur expenses, without being paid accurately or timely and without
21 accurate or timely reimbursement.

22 37.All of the safety violations described above endanger the aggrieved employees.
23 The significance of the safety violations is compounded by the fact that the
24 drivers are operating approximately 100 ton commercial vehicles (at unsafe
25 speeds and/or that have been red tagged and/or the trailer weight distribution is
26 inaccurate), causing a heightened and reckless exposure of injury or death not
27 just to UPS employees but also to the public at large.

1 38.Plaintiffs are informed and believe and on that basis thereon allege that,
2 throughout the Liability Period, UPS decreased their employee related costs to
3 position themselves to offer customers better rates than their law-abiding
4 competitors, including but not limited to reducing these costs by systematically
5 violating their own policies as set forth in the Employee Handbooks by,
6 improperly and unlawfully, engaging in employment practices which also
7 violated applicable regulations, statutes and laws meant to protect Plaintiffs and
8 the aggrieved employees. To be sure, one purpose of making the premium runs
9 in the time frames scheduled is to encourage the premium costumers to use
10 UPS's services rather than the competition.

11 39.The employment practices described in this paragraph were and continue to be
12 in violation of the California Labor Code and IWC Wage Order 5, including
13 without limitation those sections cited in this Complaint.

14 40.Throughout the Liability Period, UPS had, and continue to have, a consistent
15 employment practice, with respect to their hourly employees, including
16 Plaintiffs, of failing to provide the required ten (10) minute rest periods and of
17 failing to pay the one (1) hour of pay in lieu of providing the rest periods. The
18 employment practices described in this paragraph were and continue to be in
19 violation of the California Labor Code and IWC Wage Order 5, including
20 without limitation those sections cited in this Complaint.

21 41.Throughout the Liability Period, UPS had, and continue to have, a consistent
22 employment practice, with respect to their hourly employees, including
23 Plaintiffs, of failing to provide the required uninterrupted thirty (30) minute
24 meal period, and of failing to pay the one (1) hour of pay in lieu of providing
25 the meal period. The employment practices described in this paragraph were
26 and continue to be in violation of the California Labor Code and IWC Wage
27 Order 5, including without limitation those sections cited in this Complaint.
28

1 42. Throughout the Liability Period, UPS had, and continue to have, a consistent
2 employment practice of not compensating their hourly employees, including
3 Plaintiffs, for reporting time, including when hourly employees reported for
4 mandatory meetings and/or telephone conference calls and/or responding to
5 work-related calls and text messages off the clock. The employment practices
6 described in this paragraph were and continue to be in violation of the
7 California Labor Code and IWC Wage Order 5, including without limitation
8 those sections cited in this Complaint.

9 43. Throughout the Liability Period, UPS had and continue to have, a consistent
10 employment practice of failing to timely pay compensation due and owing, at
11 the time of the regular pay check and at the time of termination or resignation,
12 with respect to their hourly employees, including Plaintiff KISMAN. The
13 employment practices described in this paragraph were and continue to be in
14 violation of the California Labor Code and IWC Wage Order 5, including
15 without limitation [*California Labor Code §§ 201-203*](#).

16 44. Throughout the Liability Period UPS had, and continue to have, a consistent
17 employment practice, with respect to their hourly employees, including
18 Plaintiffs, of knowingly and intentionally failing to comply with the itemized
19 employee wage statement provisions. The violations by UPS on the wage
20 statements included *inter alia*:

- 21 (a) falsely understating the gross wages earned by failing to report and
22 pay for all hours worked, including meal breaks and hours required to
23 be worked off the clock before and after each shift;
- 24 (b) falsely understating the gross wages earned by failing to report and
25 pay for the number of hours worked at each applicable hourly rate;
- 26 (c) falsely understating the net wages earned by failing to report and pay
27 for all hours worked at the applicable hourly wage; and
28

(d) failing to maintain for three (3) years the statements as required and by failing to properly record required information such as what is alleged above in subsections (a) through (g) of this paragraph. The employment practices described in this paragraph were and continue to be in violation of the California Labor Code and IWC Wage Order 5, including without limitation those sections cited in this Complaint.

45. As alleged herein, the improper and unlawful employment practices as set forth in this complaint hereinabove were known and formulated by UPS, and were and remain in existence at the UPS with knowledge and approval of UPS in violation of the Plaintiffs under the applicable regulations, statutes and laws as alleged herein.

46. Among others, the employment practices of DEFENDANTS, and each of them, violated IWC Wage Order 5 including, but not limited to, Sections 3, 4, 5, 7, 8, 9(A), 11, 12, 13 and 20 ("IWC Wage Order 5"), and California Labor Code Sections, including but not limited to, Sections 201-203, 206, 206.5, 216, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.6, 226.7, 229, 233, 234, 256, 350, 351, 353, 356, 432, 450, 510, 512, 558, 558.1 1174, 1174.5, 1175, 1182.11, 1182.12, 1185, 1194, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198.5, 1199, 2802, 6300, 6301, 6311, 6400, 6401, 6402, 6403, 6401.7, 6404, 6406, 6423, 6424, 6425, 6426, 6427, 6428, 6429, 6430, 6431, 6432, and 6433 by:

- (a) failing to pay wages including minimum wages, applicable overtime and expenses;
- (b) failing to provide paid rest periods and/or failing to pay one (1) hour of pay in lieu thereof;
- (c) failing to provide meal periods of at least thirty (30) minutes (including not providing the thirty (30) minute meal period and/or mandating that it be taken later than the 5-hour mark, often resulting in employees working an

1 additional five (5) or more hours without a meal period) and/or failing to
2 pay one (1) hour of pay in lieu thereof;

3 (d) failing to pay reporting time and other wages;

4 (e) failing to timely pay compensation due and owing;

5 (f) failing to comply with the itemized wage statement requirement;

6 (g) failing to comply with OSHA safety regulations as set forth in Labor Code
7 sections 6300, et seq.

8 47. Plaintiffs are informed and believe and on that basis allege that, throughout the
9 Liability Period, UPS were and are well aware of, and received employee
10 complaints, that their employment practices as alleged were improper and
11 unlawful in violation of IWC Wage Order 5 and the California Labor Code as
12 stated above. Yet UPS insisted on, and continue to persist in, the unlawful
13 employment practices as alleged herein. The willful failure of DEFENDANTS
14 to comply with IWC Wage Order 5 and the California Labor Code was
15 deliberate, malicious, oppressive and showed a callous disregard for the rights
16 and safety of Plaintiffs, who relied on DEFENDANTS to compensate and
17 otherwise treat them fairly consistent with the applicable regulations, statutes
18 and laws.

19 **II. LABOR CODE VIOLATIONS UNDER THE LABOR CODE PRIVATE**
20 **ATTORNEYS GENERAL ACT (Labor Code §§ 2698-2699):**

21 **FIRST CAUSE OF ACTION**

22 **PENALTIES PURSUANT TO LABOR CODE §2699**

23 **(On Behalf of the Aggrieved Employees)**

24 **(Against All Defendants)**

25 48. Plaintiffs incorporate by reference and reallege each and every one of the
26 allegations contained in the preceding and foregoing paragraphs of this
27 Complaint as if fully set forth herein.

28 **A. FAILURE TO PROVIDE ALL MEAL PERIODS**

1 49. Labor Code §226.7(b) provides that “An employer shall not require an
2 employee to work during a meal or rest or recovery period mandated pursuant
3 to an applicable statute, or applicable regulation, standard, or order of the
4 Industrial Welfare Commission, the Occupational Safety and Health Standards
5 Board, or the Division of Occupational Safety and Health.”

6 50. Labor Code §512 provides that “An employer may not employ an employee for
7 a work period of more than five hours per day without providing the employee
8 with a meal period of not less than 30 minutes, except that if the total work
9 period per day of the employee is no more than six hours, the meal period may
10 be waived by mutual consent of both the employer and employee. An employer
11 may not employ an employee for a work period of more than 10 hours per day
12 without providing the employee with a second meal period of not less than 30
13 minutes, except that if the total hours worked is no more than 12 hours, the
14 second meal period may be waived by mutual consent of the employer and the
15 employee only if the first meal period was not waived.”

16 51. Labor Code §516 provides that the Industrial Welfare Commission “may adopt
17 or amend working condition orders with respect to break periods, meal periods,
18 and days of rest for any workers in California consistent with the health and
19 welfare of those workers.”

20 52. Section 11(A) of the IWC Wage Order(s) provides that “Unless the employee is
21 relieved of all duty during a 30 minute meal period, the meal period shall be
22 considered an “on duty” meal period and counted as time worked. An “on duty”
23 meal period shall be permitted only when the nature of the work prevents an
24 employee from being relieved of all duty and when by written agreement
25 between the parties an on-the-job paid meal period is agreed to. The written
26 agreement shall state that the employee may, in writing, revoke the agreement
27 at any time.”

28 53. Section 11(B) of the IWC Wage Order(s) provides that “If an employer fails to

1 provide an employee a meal period in accordance with the applicable provisions
2 of this order, the employer shall pay the employee one (1) hour of pay at the
3 employee's regular rate of compensation for each workday that the meal period
4 is not provided."

5 54. On one or more occasions, certain aggrieved employees worked over five (5)
6 hours per shift and therefore were entitled to a meal period of not less than
7 thirty (30) minutes prior to exceeding five (5) hours of employment.

8 55. Further, on one or more occasions, certain aggrieved employees worked over
9 ten (10) hours per shift and therefore were entitled to a second meal period of
10 not less than 30 minutes.

11 56. These aggrieved employees did not validly or legally waive their meal periods,
12 by mutual consent with Defendants or otherwise.

13 57. These aggrieved employees did not enter into any written agreement with
14 Defendants agreeing to an on-the-job paid meal period.

15 58. As such, as a matter of Defendants' established company policy, Defendants
16 failed to always comply with the meal period requirements established by Labor
17 Code §226.7, Labor Code §512, Labor Code §516 and Section 11 of the IWC
18 Wage Order(s) by failing to always provide these aggrieved employees with a
19 first and in some cases a second legally compliant meal period, and creates an
20 entitlement to recovery by the aggrieved employees of penalties pursuant to
21 Labor Code §§2698, et seq.

22 59. Pursuant to Labor Code §§2699(g)(1), and/or any other applicable statute, these
23 aggrieved employees request that the Court award reasonable attorneys' fees
24 and costs incurred by them in this action.

25 **B. FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST**
26 **PERIODS**

27 60. Labor Code §226.7(b) provides that "An employer shall not require an
28 employee to work during a meal or rest or recovery period mandated pursuant

1 to an applicable statute, or applicable regulation, standard, or order of the
2 Industrial Welfare Commission, the Occupational Safety and Health Standards
3 Board, or the Division of Occupational Safety and Health.”

4 61. Labor Code §516 provides that the Industrial Welfare Commission “may adopt
5 or amend working condition orders with respect to break periods, meal periods,
6 and days of rest for any workers in California consistent with the health and
7 welfare of those workers.”

8 62. Section 12(A) of the IWC Wage Order(s) states: “Every employer shall
9 authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period. The authorized rest
11 period time shall be based on the total hours worked daily at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof. However, a
13 rest period need not be authorized for employees whose total daily work time is
14 less than three and one-half (3 ½) hours. Authorized rest period time shall be
15 counted as hours worked for which there shall be no deduction from wages.”

16 63. DOT regulations require 15 minute rest breaks, but Defendant failed to abide by
17 those standards as well.

18 64. Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to
19 provide an employee a rest period in accordance with the applicable provisions
20 of this order, the employer shall pay the employee one (1) hour of pay at the
21 employee’s regular rate of compensation for each workday that the rest period
22 is not provided.”

23 65. Here, certain aggrieved employees sometimes worked over four (4) hours per
24 shift and therefore were entitled to a rest period of not less than ten (10) minutes
25 prior to exceeding four (4) hours of employment.

26 66. As a matter of Defendants’ established company policy, Defendants failed to
27 always authorize and permit the required rest periods established by Labor
28 Code §226.7 and Labor Code §516 and Section 12 of the IWC Wage Order(s),

1 and creates an entitlement to recovery by the aggrieved employees of penalties
2 pursuant to Labor Code §§2698, et seq.

3 67. Pursuant to Labor Code §§2699(g)(1), , and/or any other applicable statute,
4 these aggrieved employees request that the Court award reasonable attorneys'
5 fees and costs incurred by them in this action.

6 **C. FAILURE TO PAY REPORTING TIME PAY**

7 68. Labor Code §1198 states: "The maximum hours of work and the standard
8 conditions of labor fixed by the commission shall be the maximum hours of
9 work and the standard conditions of labor for employees. The employment of
10 any employee for longer hours than those fixed by the order or under conditions
11 of labor prohibited by the order is unlawful."

12 69. Pursuant to the IWC Wage Order(s), Defendants are required to pay the
13 aggrieved employees for all hours worked, meaning the time during which an
14 employee is subject to the control of an employer.

15 70. The IWC Wage Order(s) §4(A) state: "Each workday an employee is required
16 to report for work and does report, but is not put to work or is furnished less
17 than half said employee's usual or scheduled day's work, the employee shall be
18 paid for half the usual or scheduled day's work, but in no event for less than
19 two (2) hours nor more than four (4) hours, at the employee's regular rate of
20 pay, which shall not be less than the minimum wage."

21 71. The IWC Wage Order(s) §4(B) state: "If an employee is required to report for
22 work a second time in any one workday and is furnished less than two (2) hours
23 of work on the second reporting, said employee shall be paid for two (2) hours
24 at the employee's regular rate of pay, which shall not be less than the minimum
25 wage."

26 72. Defendants sometimes required the aggrieved employees to report for work at
27 their scheduled reporting time of 7:00 a.m. for mandatory work meetings that
28 last approximately two to three hours. After the meeting, some aggrieved

1 employees are sent home without any further work that day. As such, these
2 aggrieved employees are furnished less than half their usual or scheduled day's
3 work, without paying for half the usual or scheduled day's work (at least two
4 (2) hours) at each respective aggrieved employees' regular rate of pay.

5 73. At no time when Defendants did not pay the legally requisite Reporting Time
6 Pay were the provisions of the IWC Wage Orders §4(C) or (D) applicable, in
7 that Defendants' acts were not the cause of threats to employees or property,
8 public utility failures, Acts of God or other causes not within Defendants'
9 control or employees on paid standby status.

10 74. The pattern and practice in uniform administration of corporate policy
11 regarding Defendants' failure to pay the legal reporting time pay to the
12 aggrieved employees as described herein is unlawful and creates entitlement to
13 recovery by the aggrieved employees of penalties pursuant to Labor Code
14 §§2698, et seq.

15 75. Pursuant to Labor Code §218.6 and CC §3287, the aggrieved employees seek
16 recovery of pre-judgment interest on all amounts recovered herein.

17 76. Pursuant to Labor Code §§2699(g)(1), , and/or any other applicable statute, the
18 aggrieved employees request that the Court award reasonable attorneys' fees
19 and costs incurred by them in this action.

20 **D. FAILURE TO PAY MINIMUM WAGES**

21 77. Labor Code §1194(a) states: "Notwithstanding any agreement to work for a
22 lesser wage, any employee receiving less than the legal minimum wage or the
23 legal overtime compensation applicable to the employee is entitled to recover in
24 a civil action the unpaid balance of the full amount of this minimum wage or
25 overtime compensation, including interest thereon, reasonable attorney's fees,
26 and costs of suit."

27 78. Further, pursuant to Labor Code §1197, payment of less than the minimum
28 wage fixed by the Labor Commission is unlawful.

1 79.Pursuant to the IWC Wage Order(s), Defendants are required to pay the
2 aggrieved employees for all hours worked, meaning the time during which an
3 employee is subject to the control of an employer, including all the time the
4 employee is suffered or permitted to work, whether or not required to do so.

5 80.Defendants had a consistent policy of not compensating their non-supervisory
6 employees, including Plaintiffs and the aggrieved employees, for work
7 performed, including for attendance at various events and/or meetings and/or
8 conference calls at which the non-supervisory employees were suffered or
9 permitted to work subject to the control of Defendants.

10 81.Because Defendants required the aggrieved employees to remain under
11 Defendants' control without paying therefore, this resulted in the aggrieved
12 employees earning less than the legal minimum wage in the State of California.

13 82.Defendants' pattern, practice and uniform administration of corporate policy
14 regarding illegal employee compensation as described herein is unlawful and
15 creates an entitlement to recovery by the aggrieved employees of penalties
16 pursuant to Labor Code §§2698, et seq.

17 83.Pursuant to Labor Code §§2699(g)(1), , and/or any other applicable statute, the
18 aggrieved employees request that the Court award reasonable attorneys' fees
19 and costs incurred by them in this action

20 **E. FAILURE TO PAY OVERTIME WAGES**

21 84.Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours
22 in one workday and any work in excess of 40 hours in any one workweek ...
23 shall be compensated at the rate of no less than one and one-half times the
24 regular rate of pay for any employee."

25 85.The "regular rate of pay" includes "all [applicable] remuneration paid to, or on
26 behalf of the employee." See, e.g., 29 U.S.C. §207(3). The California Industrial
27 Welfare Commission applies this standard for determining an employee's
28 regular rate of pay for overtime calculation purposes.

1 86.Labor Code §§1194(a) states: “Notwithstanding any agreement to work for a
2 lesser wage, any employee receiving less than the legal minimum wage or the
3 legal overtime compensation applicable to the employee is entitled to recover in
4 a civil action the unpaid balance of the full amount of this minimum wage or
5 overtime compensation, including interest thereon, reasonable attorney’s fees,
6 and costs of suit.”

7 87.Defendants, as a matter of established company policy and procedure, at each
8 and every one of the individual facilities owned and/or operated by Defendants,
9 consistently shifted overtime hours worked out of the workweek in which they
10 were worked. Defendants placed such hours into or carried over to a later
11 week—when the employee was then scheduled to work fewer hours—in order
12 to avoid paying premium wages for overtime hours.

13 88.Due to this policy, Defendants failed to pay the aggrieved employees for all
14 work accomplished in excess of forty (40) hours per week at the appropriate
15 overtime rate as required by law.

16 89.Defendants’ pattern, practice and uniform administration of corporate policy
17 regarding illegal employee compensation as described herein is unlawful and
18 creates an entitlement, pursuant to Labor Code §218 and Labor Code §1194(a),
19 to recovery by the aggrieved employees of penalties pursuant to Labor Code
20 §§2698, et seq.

21 90.Pursuant to Labor Code §§2699(g)(1), , and/or any other applicable statute, the
22 aggrieved employees request that the Court award reasonable attorneys’ fees
23 and costs incurred by them in this action.

24 **F. DERIVATIVE FAILURE TO TIMELY FURNISH ACCURATE**
25 **ITEMIZED WAGE STATEMENTS**

26 91.Labor Code §226(a) states in pertinent part: “Every employer shall,
27 semimonthly or at the time of each payment of wages, furnish each of his or her
28 employees, either as a detachable part of the check, draft, or voucher paying the

1 employee's wages, or separately when wages are paid by personal check or
2 cash, an accurate itemized statement in writing showing (1) gross wages earned,
3 (2) total hours worked by the employee... (4) all deductions... (5) net wages
4 earned, (6) the inclusive dates of the period for which the employee is paid...
5 (8) the name and address of the legal entity that is the employer, and (9) all
6 applicable hourly rates in effect during each the pay period and the
7 corresponding number of hours worked at each hourly rate by the
8 employee....”.

9 92. Further, the IWC Wage Orders §7(A) states in pertinent part: “(A) Every
10 employer shall keep accurate information with respect to each employee
11 including the following: (3) Time records showing when the employee begins
12 and ends each work period. Meal periods, split shift intervals, and total daily
13 hours worked shall also be recorded... (5) Total hours worked in the payroll
14 period and applicable rates of pay....”

15 93. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A),
16 California employers are required to maintain accurate records pertaining to the
17 total hours worked for Defendants by the aggrieved employees, including but
18 not limited to, beginning and ending of each work period, meal period and split
19 shift interval, the total daily hours worked, and the total hours worked per pay
20 period and applicable rates of pay.

21 94. As a pattern and practice, in violation of Labor Code §226(a) and the IWC
22 Wage Orders §7(A), Defendants did not and still do not furnish each of the
23 members of the aggrieved employees with an accurate itemized statement in
24 writing showing (1) gross wages earned, (2) total hours worked by the
25 employee, (3) all deductions, (4) net wages earned and/or (5) all applicable
26 hourly rates in effect during each respective pay period and the corresponding
27 number of hours worked at each hourly rate by each respective individual.

28 95. As set forth herein in prior causes of action, Defendants allegedly failed to pay

1 the aggrieved employees all wages due and owing.

2 96.As a derivative result of this failure to pay wages and as a pattern and practice
3 in violation of Labor Code §226(a) and the IWC Wage Orders §7(A),
4 Defendants did not and do not maintain accurate records pertaining to the total
5 hours worked for Defendants by the members of the aggrieved employees,
6 including but not limited to, beginning and ending of each work period, meal
7 period interval, total daily hours worked, total hours worked per pay period, and
8 the applicable rates of pay.

9 97.As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an
10 employee suffers injury if the employer fails to provide accurate and complete
11 information as required by any one or more items listed in Labor Code
12 §226(a)(1)-(9) and the employee cannot promptly and easily ascertain requisite
13 information without reference to other documents or information.

14 98.Here, the aggrieved employees suffered injury because, due to Defendants'
15 failure to pay all wages due and owing, Defendants derivatively failed to
16 provide accurate and complete information as required by one or more items
17 listed in Labor Code §226(a)(1)-(9).

18 99.In addition, the aggrieved employees have suffered injury as a result of
19 Defendants' failure to maintain accurate records for the aggrieved employees in
20 that the aggrieved employees were not timely provided written accurate
21 itemized statements showing all requisite information, including but not limited
22 to total hours worked by the employee, net wages earned and all applicable
23 hourly rates in effect during the pay period and the corresponding number of
24 hours worked at each hourly rate, in violation of Labor Code §226 and the IWC
25 Wage Orders §7(A), such that the aggrieved employees were misled by
26 Defendants as to the correct information regarding various items, including but
27 not limited to total hours worked by the employee, net wages earned and all
28 applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate.

100. The actual injuries suffered by the aggrieved employees as a result of Defendants' knowing and intentional failure to maintain accurate records for the aggrieved employees include but are not limited to:

- a. Confusion over whether they received all wages owed them by Defendants;
- b. The difficulty and expense of attempting to reconstruct time and pay records;
- c. Being forced to engage in mathematical computations to analyze whether Defendants' wages in fact compensated for all hours worked;
- d. The inability to accurately calculate wage rates complicated by the fact that wage statement information required by Labor Code §226 is missing;
- e. That such practice prevents the aggrieved employees from being able to effectively challenge information on their wage statements; and/or
- f. The difficulty and expense of filing and maintaining this lawsuit, and the discovery required to collect and analyze the very information that California law requires.

101. Pursuant to Labor Code §226(e), the aggrieved employees are entitled to recovery by the aggrieved employees of penalties pursuant to Labor Code §§2698, et seq.

102. Pursuant to Labor Code §2699(g)(1), Labor Code §226(e) and/or §226(g), and/or any other applicable statute, the aggrieved employees are also entitled to an award of costs and reasonable attorneys' fees.

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**G. INDEPENDENT FAILURE TO TIMELY FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**

103. Labor Code §226(a) states in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period...”.

104. As a pattern and practice, in violation of Labor Code §226(a), Defendants did not and still do not furnish each of the aggrieved employees with an accurate itemized statement in writing showing the name and address of the legal entity that is the employer.

105. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an employee suffers injury if the employer fails to provide accurate and complete information as required by any one or more items listed in Labor

1 Code §226(a)(1)-(9) and the employee cannot promptly and easily ascertain
2 requisite information without reference to other documents or information.

3 106. Here, the aggrieved employees suffered injury because Defendants
4 failed to provide accurate and complete information as required by one or more
5 items listed in Labor Code §226(a)(1)-(9) and the aggrieved employees could
6 not and cannot promptly and easily ascertain requisite information without
7 reference to other documents or information.

8 107. In addition, the aggrieved employees have suffered injury as a result
9 of Defendants' failure to maintain accurate records for the aggrieved employees
10 in that the aggrieved employees were not timely provided written accurate
11 itemized statements showing all requisite information, including but not limited
12 to the name and address of the legal entity that is the employer, in violation of
13 Labor Code §226, such that the aggrieved employees were misled by
14 Defendants as to the correct information regarding various items, including but
15 not limited to the name and address of the legal entity that is the employer.

16 108. The actual injuries suffered by the aggrieved employees as a result of
17 Defendants' knowing and intentional failure to maintain accurate records for
18 the aggrieved employees include but are not limited to:

- 19 a. That such practice prevents the aggrieved employees from being
20 able to effectively challenge information on their wage statements;
21 and/or
- 22 b. The difficulty and expense of filing and maintaining this lawsuit,
23 and the discovery required to collect and analyze the very
24 information that California law requires.

25 109. Pursuant to Labor Code §226(e), the aggrieved employees are entitled
26 to recovery by the aggrieved employees of penalties pursuant to Labor Code
27 §§2698, et seq.

28 110. Pursuant to Labor Code §2699(g)(1), Labor Code §226(e) and/or

§226(g), and/or any other applicable statute, the aggrieved employees are also entitled to an award of costs and reasonable attorneys' fees.

H. DERIVATIVE VIOLATIONS OF LABOR CODE §203

111. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

112. The aggrieved employees are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

113. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

114. As set forth above, Defendants willfully failed to pay the aggrieved employees their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

115. Defendants' willful failure to pay wages to the aggrieved employees violates Labor Code §203 because Defendants knew or should have known wages were due to the aggrieved employees, as set forth above, but Defendants failed to pay them.

116. Thus, the aggrieved employees are entitled to recovery by the aggrieved employees of penalties pursuant to Labor Code §§2698, et seq.

I. INDEPENDENT VIOLATIONS OF LABOR CODE §203 RE: LATE CHECKS

117. Labor Code §203 provides that if an employer willfully fails to timely pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of

1 the employee shall continue at the same rate, for up to thirty (30) days from the
2 due date thereof, until paid or until an action therefore is commenced.

3 118. The aggrieved employees are no longer employed by Defendants as
4 they were either discharged from or quit Defendants' employ.

5 119. Defendants had a consistent and uniform policy, practice and
6 procedure of willfully failing to timely pay the earned wages of Defendants'
7 former employees, including vacation wages, according to amendment or proof.

8 120. As such, Defendants willfully failed to pay the aggrieved employees
9 all wages due and owing at the time of their termination and/or within seventy-
10 two (72) hours of their resignation.

11 121. Defendants' willful failure to timely pay final wages to the aggrieved
12 employees violates Labor Code §203 because Defendants knew or should have
13 known final wages were due to the aggrieved employees by a date certain, but
14 Defendants failed to pay them on a timely basis on or before that deadline.

15 122. Thus, the aggrieved employees are entitled to recovery by the
16 aggrieved employees of penalties pursuant to Labor Code §§2698, et seq.

17 **J. VIOLATIONS OF OCCUPATIONAL SAFETY AND HEALTH (LABOR**
18 **CODE 6300 ET SEQ)**

19 123. DEFENDANTS violated numerous health and safety codes, including but
20 not limited to processing food for human consumption that had fallen on the
21 floor, contained bits of plastic, and other unsanitary practices. This not only
22 subjected employees to unsafe conditions but also the public at large.

23 124. UPS failed to establish, implement, or maintain an effective injury-
24 prevention program ([§ 6401.7, subd. \(a\)](#));

25 125. UPS failed to provide a place of employment that is safe and healthful
26 (Labor Code § 6400);

27 126. UPS failed to furnish and use safety devices and safeguards, and adopt and
28 use practices, means, methods, operations, and processes which are reasonably

adequate to render such employment and place of employment safe and healthful (Labor Code § 6401);

127. UPS failed to implement and maintain an effective written injury prevention program (Labor Code § 6401.7);

128. UPS required or permitted an employee to go or be in any employment or place of employment which is not safe and healthful (Labor Code § 6402);

129. UPS failed or neglected to provide and use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate methods and processes, or to do every other thing reasonably necessary to protect the life, safety and health of employees (Labor Code § 6403).

130. UPS failed to occupy or maintain a place of employment that is safe and healthful (Labor Code § 6402).

131. UPS interfered with the use of safety equipment and/or the use of methods or processes adopted for the protection of employees or place of employment, and failed to do every other thing reasonably necessary to protect the life, safety, and health of employees. (Labor Code § 6406).

132. Under Labor Code §6432, there is a rebuttable presumption that UPS violated safety regulations.

K. PENALTIES ASSESSED

133. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agencies or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all

1 applicable civil penalties, including but not limited to the following:

- 2 a. As applicable, civil penalties under Labor Code §210 (in addition
3 to and entirely independent and apart from any other penalty
4 provided in the Labor Code), for each employee who is/was not
5 paid wages in accordance with Labor Code §204 in the amount of
6 a civil penalty of one hundred dollars (\$100) for each aggrieved
7 employee per pay period for each initial violation, and two
8 hundred dollars (\$200) for each aggrieved employee per pay
9 period for each subsequent violation
- 10 b. As applicable, civil penalties under Labor Code §226.3 (in addition
11 to and entirely independent and apart from any other penalty
12 provided in the Labor Code), for each violation of Labor Code
13 §226(a), in the amount of \$250 for each aggrieved employee per
14 pay period for each violation and \$1,000 for each aggrieved
15 employee per pay period for each subsequent violation;
- 16 c. As applicable, civil penalties under Labor Code §256 (in addition
17 to and entirely independent and apart from any other penalty
18 provided in the Labor Code), for any aggrieved employee who was
19 discharged or quit, and was not paid all earned wages at
20 termination in accordance with Labor Code §§201, 201.1, 201.5,
21 202, and 205.5, in the amount of a civil penalty of one day of pay,
22 at the same rate, for each day that he or she was paid late, until
23 payment was/is made, up to a maximum of thirty (30) days;
- 24 d. As applicable, civil penalties pursuant to Labor Code §558, in
25 addition to and entirely independent and apart from other penalties
26 in the Labor Code, as follows:
- 27 i For any initial violation, fifty dollars (\$50) for each
28 aggrieved underpaid employee for each pay period for

- 1 which the employee was underpaid in addition to an
2 amount which is sufficient to recover unpaid wages;
- 3 ii. For each subsequent violation, one hundred dollars
4 (\$100) for each aggrieved underpaid employee for each
5 pay period for which the employee was underpaid; and
- 6 e. As applicable, civil penalties under Labor Code §1197.1 (in
7 addition to and entirely independent and apart from any other
8 penalty provided in the Labor Code), for each violation of Labor
9 Code §1197, in the amount of \$100 for each aggrieved employee
10 per pay period for each violation and \$250 for each aggrieved
11 employee per pay period for each subsequent violation;
- 12 f. As applicable, civil penalties under Labor Code §6427 (in addition
13 to and entirely independent and apart from any other penalty
14 provided in the Labor Code), for each violation of Labor Code
15 §§6300, 6301, 6311, 6400, 6401, 6402, 6403, 6401.7, 6404 and/or
16 6406, in the amount of \$12,471 for each aggrieved employee for
17 each violation;
- 18 g. As applicable, civil penalties under Labor Code §6428 (in addition
19 to and entirely independent and apart from any other penalty
20 provided in the Labor Code), for each violation of Labor Code
21 §§6300, 6301, 6311, 6400, 6401, 6402, 6403, 6401.7, 6404 and/or
22 6406, in the amount of \$25,000 for each aggrieved employee for
23 each violation;
- 24 h. As applicable, civil penalties under Labor Code §6431 (in addition
25 to and entirely independent and apart from any other penalty
26 provided in the Labor Code), for each violation of Labor Code
27 §§6300, 6301, 6311, 6400, 6401, 6402, 6403, 6401.7, 6404 and/or
28 6406, in the amount of \$12,471 for each aggrieved employee for

each violation;

- i. As applicable, civil penalties under Labor Code §6429 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §§6300, 6301, 6311, 6400, 6401, 6402, 6403, 6401.7, 6404 and/or 6406, in the amount of \$124,709 for each aggrieved employee for each willful or repeated violation;
- j. As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and
- k. Any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

134. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to all aggrieved employees.

135. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to Labor Code §§2699(g)(1), and any other applicable statute.

136. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1) The aggrieved employee or

1 representative shall give written notice by certified mail to the Labor and
2 Workforce Development Agency and the employer of the specific provisions of
3 this code alleged to have been violated, including the facts and theories to
4 support the alleged violation.”

5 137. Labor Code §2699.3(c)(1) states in pertinent part: “A civil action by
6 an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699
7 alleging a violation of any provision other than those listed in Section 2699.5 or
8 Division 5 (commencing with Section 6300) shall commence only after the
9 following requirements have been met: (1) The aggrieved employee or
10 representative shall give written notice by certified mail to the Labor and
11 Workforce Development Agency and the employer of the specific provisions of
12 this code alleged to have been violated, including the facts and theories to
13 support the alleged violation.”

14 138. Here, Plaintiffs’ civil action alleges violations of provisions listed in
15 Labor Code §2699.5 and violations of provisions other than those listed in
16 Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to
17 this action.

18 139. On June 1, 2022, Plaintiffs complied with Labor Code §2699.3(a) and
19 Labor Code §2699.3(c) in that Plaintiffs gave written notice by certified mail to
20 OSHA and the LWDA and Defendants of the specific provisions of the Labor
21 Code alleged to have been violated, including the facts and theories to support
22 the alleged violations. Attached hereto as Exhibit “1” is Plaintiffs’ LWDA
23 letter.

24 140. Labor Code §2699.3(a) further states in pertinent part: “(2)(A) The
25 agency shall notify the employer and the aggrieved employee or representative
26 by certified mail that it does not intend to investigate the alleged violation
27 within 30 calendar days of the postmark date of the notice received pursuant to
28 paragraph (1). Upon receipt of that notice or if no notice is provided within 33

1 calendar days of the postmark date of the notice given pursuant to paragraph
2 (1), the aggrieved employee may commence a civil action pursuant to Section
3 2699.”

4 141. As of August 1, 2022 (60 calendar days after Plaintiff’s LWDA letter
5 was mailed via certified mail), Plaintiff had not received any notification that
6 OSHA or the LWDA intended to investigate the alleged violations. As such,
7 Plaintiffs have complied with Labor Code §2699.3(a) and have been given
8 authorization therefrom to commence a civil action, which includes a cause of
9 action pursuant to Labor Code §2699.

10 **VI.**

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray:

13 As to the First Cause of Action for Penalties Pursuant to Labor Code
14 §2699:

15 a. For civil penalties pursuant to Labor Code §2699(f), in addition to and
16 entirely independent and apart from other penalties in the Labor Code and for
17 Labor Code violations without a specific civil penalty, in the amount of \$100 for
18 each aggrieved employee per pay period for each violation, and \$200 for each
19 aggrieved employee per pay period for each subsequent violation;

20 b. For civil penalties under Labor Code §210, in addition to and entirely
21 independent and apart from other penalties in the Labor Code, in the amount of
22 \$100 for each aggrieved employee per pay period for each violation, and \$200 for
23 each aggrieved employee per pay period for each subsequent violation;

24 c. For civil penalties under Labor Code §225.5, in addition to and
25 entirely independent and apart from other penalties in the Labor Code, in the
26 amount of \$100 for each aggrieved employee per pay period for each violation,
27 and \$200 for each aggrieved employee per pay period for each subsequent
28 violation,;

1 d. For civil penalties per Labor Code §226.3, in addition to and entirely
2 independent and apart from other penalties in the Labor Code, in the amount of
3 \$250 for each aggrieved employee per pay period for each violation, and \$1,000
4 for each aggrieved employee per pay period for each subsequent violation;

5 e. For civil penalties per Labor Code §256, in addition to and entirely
6 independent and apart from other penalties in the Labor Code, in the amount of one
7 day of pay, at the same rate, for each day that an aggrieved employee was paid late,
8 at the time of termination, until payment was/is made, up to a maximum of thirty
9 (30) days;

10 f. For civil penalties under Labor Code §1197.1, in addition to and
11 entirely independent and apart from any other penalty provided in the Labor Code,
12 in the amount of \$100 for each aggrieved employee per pay period for each
13 violation and \$250 for each aggrieved employee per pay period for each
14 subsequent violation;

15 g. For civil penalties under Labor Code §6427 (in addition to and
16 entirely independent and apart from any other penalty provided in the Labor Code),
17 for each violation of Labor Code §§6300, 6301, 6311, 6400, 6401, 6402, 6403,
18 6401.7, 6404 and/or 6406, in the amount of \$12,471 for each aggrieved employee
19 for each violation;

20 h. For civil penalties under Labor Code §6428 (in addition to and
21 entirely independent and apart from any other penalty provided in the Labor Code),
22 for each violation of Labor Code §§6300, 6301, 6311, 6400, 6401, 6402, 6403,
23 6401.7, 6404 and/or 6406, in the amount of \$25,000 for each aggrieved employee
24 for each violation;

25 i. For civil penalties under Labor Code §6431 (in addition to and
26 entirely independent and apart from any other penalty provided in the Labor Code),
27 for each violation of Labor Code §§6300, 6301, 6311, 6400, 6401, 6402, 6403,
28 6401.7, 6404 and/or 6406, in the amount of \$12,471 for each aggrieved employee

1 for each violation;

2 j. For civil penalties under Labor Code §6429 (in addition to and
3 entirely independent and apart from any other penalty provided in the Labor Code),
4 for each violation of Labor Code §§6300, 6301, 6311, 6400, 6401, 6402, 6403,
5 6401.7, 6404 and/or 6406, in the amount of \$124,709 for each aggrieved employee
6 for each willful or repeated violation;

7 k. For civil penalties under Labor Code §2699(f), for all violations of the
8 Labor Code except for those for which a civil penalty is specifically provided, in
9 the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay
10 period for the initial violation; and two hundred dollars (\$200.00) for each
11 aggrieved employee per pay period for each subsequent violation; and

12 l. Any and all additional applicable civil penalties and sums as provided
13 by the Labor Code and/or other relevant statutes.

14 m. For reasonable attorneys' fees and costs incurred pursuant to Labor
15 Code §§2699(g)(1) and any other applicable statute; and

16 n. For such relief as this Court may deem just and proper, including
17 reasonable attorneys' fees and costs incurred.

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19 Dated: June 1, 2022 CANTOR LAW

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21 By: _____
22 ZACHARY M. CANTOR, ESQ.
23 Attorney for Plaintiffs
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