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

OCT 31 2022

BY 
LILIANA MARISCAL, DEPUTY

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

NORBERTO MUNOZ, individually, and
on behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

MENDOCINO FOREST PRODUCTS
COMPANY, LLC, a Delaware limited
liability company; HUMBOLDT
REDWOOD COMPANY, LLC, a Delaware
limited liability company; MENDOCINO
REDWOOD COMPANY, LLC, a Delaware
limited liability company; ALLWEATHER
WOOD, LLC, a Delaware limited liability
company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CIVSB2217495

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698,

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- et seq.*;
(9) Violation of California Business &
Professions Code §§ 17200, *et seq.*
(Unlawful Business Practices); and
(10) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Norberto Munoz, individually and on behalf of all other members of the
2 public similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. 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.

23 3. Venue is proper in this Court, because Defendants employ persons in this
24 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
25 and occurrences related to this action occurred in this county.

26 **THE PARTIES**

27 4. Plaintiff Norberto Munoz is a resident of Riverside, in Riverside County,
28 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from

1 approximately February 2022 to April 2022. Plaintiff worked as a Warehouse Laborer at
2 Defendants' facility in Fontana, California. During his employment, Plaintiff typically
3 worked eight (8) hours per day and five (5) days per week. Plaintiff's primary job duties
4 included, without limitation, preparing lumber orders for customers, operating forklifts, and
5 handling the shipping and receiving of inventory.

6 5. MENDOCINO FOREST PRODUCTS COMPANY, LLC was and is, upon
7 information and belief, a Delaware limited liability company, and at all times hereinafter
8 mentioned, an employer whose employees are engaged throughout this county and the State of
9 California.

10 6. HUMBOLDT REDWOOD COMPANY, LLC was and is, upon information
11 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
12 employer whose employees are engaged throughout this county and the State of California.

13 7. MENDOCINO REDWOOD COMPANY, LLC was and is, upon information
14 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
15 employer whose employees are engaged throughout this county and the State of California.

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

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

23 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of MENDOCINO FOREST PRODUCTS
25 COMPANY, LLC; HUMBOLDT REDWOOD COMPANY, LLC; MENDOCINO
26 REDWOOD COMPANY, LLC; and ALLWEATHER WOOD, LLC at all relevant times.

27 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, MENDOCINO

1 FOREST PRODUCTS COMPANY, LLC; HUMBOLDT REDWOOD COMPANY, LLC;
2 MENDOCINO REDWOOD COMPANY, LLC; ALLWEATHER WOOD, LLC; and/or
3 DOES 1 through 10 (collectively, “Defendants” or “MENDOCINO”), each acting as the
4 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
5 other co-Defendants and was acting within the course and scope of such agency, employment,
6 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
7 of any and all Defendants were in accordance with, and represent, the official policy of
8 Defendants.

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

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

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

26 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
27 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
28 members because Defendants have:

- 1 (a) jointly exercised meaningful control over the work performed by
2 Plaintiff and class members;
- 3 (b) jointly exercised meaningful control over Plaintiff's and class members'
4 wages, hours, and working conditions, including the quantity, quality
5 standards, speed, scheduling, and operative details of the tasks
6 performed by Plaintiff and class members;
- 7 (c) jointly required that Plaintiff and class members perform work which is
8 an integral part of Defendants' businesses; and
- 9 (d) jointly exercised control over Plaintiff and class members as a matter of
10 economic reality in that Plaintiff and class members were dependent on
11 Defendants, who shared the power to set the wages of Plaintiff and class
12 members and determined their working conditions, and who jointly
13 reaped the benefits from the underpayment of their wages and
14 noncompliance with other statutory provisions governing their
15 employment.

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

19 17. MENDOCINO FOREST PRODUCTS COMPANY, LLC; HUMBOLDT
20 REDWOOD COMPANY, LLC; MENDOCINO REDWOOD COMPANY, LLC;
21 ALLWEATHER WOOD, LLC; and DOES 1 through 10 are therefore alter egos of each other.

22 18. Adherence to the fiction of the separate existence of Defendants would permit
23 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
24 from liability for the wrongful acts committed by them under the name MENDOCINO.

25 19. Plaintiff further alleges, upon information and belief, that Defendants
26 MENDOCINO FOREST PRODUCTS COMPANY, LLC; HUMBOLDT REDWOOD
27 COMPANY, LLC; MENDOCINO REDWOOD COMPANY, LLC; and ALLWEATHER
28 WOOD, LLC are alter egos of each other for the following reasons:

- 1 (a) On the California Secretary of State’s website
2 (<https://bizfileonline.sos.ca.gov/>), MENDOCINO FOREST
3 PRODUCTS COMPANY, LLC; HUMBOLDT REDWOOD
4 COMPANY, LLC; MENDOCINO REDWOOD COMPANY, LLC; and
5 ALLWEATHER WOOD, LLC have the same entity address and
6 mailing address, which is “3700 OLD REDWOOD H[IGH]W[A]Y,
7 SANTA ROSA, CA 95403”;
- 8 (b) According to the most recent “Statement of Information forms filed with
9 the California Secretary of State, MENDOCINO FOREST PRODUCTS
10 COMPANY, LLC; MENDOCINO REDWOOD COMPANY, LLC; and
11 ALLWEATHER WOOD, LLC share common managers and/or
12 members, including “SD Genpar, Inc.”;
- 13 (c) According to the most recent “Statement of Information” forms filed
14 with the California Secretary of State, MENDOCINO FOREST
15 PRODUCTS COMPANY, LLC; HUMBOLDT REDWOOD
16 COMPANY, LLC; MENDOCINO REDWOOD COMPANY, LLC; and
17 ALLWEATHER WOOD, LLC share the same agent for service of
18 process, “CORPORATION SERVICE COMPANY WHICH WILL DO
19 BUSINESS IN CALIFORNIA AS CSC – LAWYERS
20 INCORPORATING SERVICE”; and
- 21 (d) On information and belief, MENDOCINO FOREST PRODUCTS
22 COMPANY, LLC; HUMBOLDT REDWOOD COMPANY, LLC;
23 MENDOCINO REDWOOD COMPANY, LLC; and ALLWEATHER
24 WOOD, LLC utilize the same standardized employment forms and issue
25 the same employment policies.

26 **GENERAL ALLEGATIONS**

27 20. Defendants are leading manufacturers and distributors of top-quality redwood
28 and Douglas-fir lumber products. Upon information and belief, Defendants maintain a single,

1 centralized Human Resources (“HR”) department at their company headquarters in Santa
2 Rosa, California, which is responsible for the recruiting and hiring of new employees, and
3 communicating and implementing Defendants’ company-wide policies, including timekeeping
4 policies and meal and rest period policies, to employees throughout California.

5 21. In particular, Plaintiff and class members, on information and belief, received
6 the same standardized documents and/or written policies. Upon information and belief, the
7 usage of standardized documents and/or written policies, including new-hire documents,
8 indicate that Defendants dictated policies at the corporate level and implemented them
9 company-wide, regardless of their employees’ assigned locations or positions. Upon
10 information and belief, Defendants set forth uniform policies and procedures in several
11 documents provided at an employee’s time of hire.

12 22. Upon information and belief, Defendants maintain a centralized Payroll
13 department at their company headquarters in Santa Rosa, California, which processes payroll
14 for all non-exempt, hourly paid employees working for Defendants at their various locations
15 and jobsites in California, including Plaintiff and class members. Based upon information and
16 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
17 employees in California, irrespective of their work locations. Upon information and belief,
18 Defendants process payroll for departing employees in the same manner throughout the State
19 of California, regardless of the manner in which each employee’s employment ends.

20 23. Defendants continue to employ non-exempt or hourly paid employees in
21 California.

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

26 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
27 members were not paid for all hours worked because all hours worked were not recorded.

28 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive certain wages for
2 overtime compensation and that they were not receiving certain wages for overtime
3 compensation.

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

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

17 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to rest periods in
19 accordance with the California Labor Code and applicable IWC Wage Order or payment of
20 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
21 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
22 and class members were not authorized and permitted to take compliant rest periods, nor did
23 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
24 pay at their regular rates of pay when they were not authorized and permitted to take a
25 compliant rest period.

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive complete and
28 accurate wage statements in accordance with California law. In violation of the California

1 Labor Code, Plaintiff and class members were not provided complete and accurate wage
2 statements.

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

7 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to timely payment of all
9 wages earned upon termination of employment. In violation of the California Labor Code,
10 Plaintiff and class members did not receive payment of all wages due, including, but not
11 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
12 permissible time periods.

13 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of wages
15 during their employment. In violation of the California Labor Code, Plaintiff and class
16 members did not receive payment of all wages, including, but not limited to, overtime wages,
17 minimum wages, and/or meal and rest period premiums, within permissible time periods.

18 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to compensate
20 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
21 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
22 falsely represented to Plaintiff and class members that they were properly denied wages, all in
23 order to increase Defendants' profits.

24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 35. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

3 36. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
4 person who was employed by the alleged violator and against whom one or more of the
5 alleged violations was committed.”

6 37. Plaintiff and other current and former employees of Defendants are “aggrieved
7 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
8 or former employees and one or more of the alleged violations were committed against them.

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

12 (a) The aggrieved employee or representative shall give written notice by
13 online filing with the LWDA and by certified mail to the employer of
14 the specific provisions of the California Labor Code alleged to have
15 been violated, including the facts and theories to support the alleged
16 violation.

17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(a) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).

20 (c) The LWDA shall notify the employer and the aggrieved employee or
21 representative by certified mail that it does not intend to investigate the
22 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
23 the postmark date of the aggrieved employee’s notice. Upon receipt of
24 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
25 (65) calendar days of the postmark date of the aggrieved employee’s
26 notice, the aggrieved employee may commence a civil action pursuant
27 to California Labor Code section 2699 to recover civil penalties.

28 39. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,

1 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
2 provision other than those listed in Section 2699.5 after the following requirements have been
3 met:

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of
6 the specific provisions of the California Labor Code alleged to have
7 been violated (other than those listed in Section 2699.5), including the
8 facts and theories to support the alleged violation.
- 9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(c) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The employer may cure the alleged violation within thirty-three (33)
13 calendar days of the postmark date of the notice sent by the aggrieved
14 employee or representative. The employer shall give written notice
15 within that period of time by certified mail to the aggrieved employee or
16 representative and by online filing with the LWDA if the alleged
17 violation is cured, including a description of actions taken, and no civil
18 action pursuant to Section 2699 may commence. If the alleged violation
19 is not cured within the 33-day period, the aggrieved employee may
20 commence a civil action pursuant to Section 2699.

21 40. On August 25, 2022, Plaintiff provided written notice by online filing to the
22 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
25 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
26 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
27 Plaintiff PAGA Case Number LWDA-CM-904142-22. A true and correct copy of Plaintiff's
28 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

4 42. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
7 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

8 43. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
12 dollars (\$50) for each underpaid employee for each pay period for which the employee was
13 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
15 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
16 to any other civil or criminal penalty provided by law."

17 44. Defendants, at all times relevant to this complaint, were employers or persons
18 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
19 rights by violating various sections of the California Labor Code as set forth above.

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

23 46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
24 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
25 private attorney general, seeks assessment and collection of civil penalties for himself, all
26 other aggrieved employees, and the State of California against Defendants for violations of
27 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
28 1182.12, 1194, 1197, 1197.1, and 1198.

1 **CLASS ACTION ALLEGATIONS**

2 47. Plaintiff brings this action on his own behalf, as well as on behalf of each and
3 all other persons similarly situated, and thus seeks class certification under California Code of
4 Civil Procedure section 382.

5 48. All claims alleged herein arise under California law for which Plaintiff seeks
6 relief authorized by California law.

7 49. Plaintiff's proposed class consists of and is defined as follows:

8 All persons who worked for Defendants as non-exempt, hourly
9 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

10 50. Plaintiff's proposed subclass consists of and is defined as follows:

11 All persons who worked for Defendants as non-exempt, hourly
12 paid employees in California and who received at least one wage
13 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

14 51. Members of the Class and Subclass are referred to herein as "class members."

15 52. Plaintiff reserves the right to redefine the Class and Subclass and to add
16 additional subclasses as appropriate based on further investigation, discovery, and specific
17 theories of liability.

18 53. There are common questions of law and fact as to class members that
19 predominate over questions affecting only individual members, including, but not limited to:

- 20 (a) Whether Defendants required Plaintiff and class members to work over
21 eight (8) hours per day, over twelve (12) hours per day, or over forty
22 (40) hours per week and failed to pay all legally required overtime
23 compensation to Plaintiff and class members;
- 24 (b) Whether Defendants failed to pay Plaintiff and class members at least
25 minimum wages for all hours worked;
- 26 (c) Whether Defendants failed to provide Plaintiff and class members with
27 meal periods;
- 28 (d) Whether Defendants failed to authorize and permit Plaintiff and class

members to take rest periods;

- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members during their employment;
- (i) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (j) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

54. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if

any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

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

6 56. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
9 be the . . . standard conditions of labor for employees. The employment of any employee . . .
10 under conditions of labor prohibited by the order is unlawful.”

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

15 58. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day
17 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
18 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
19 workweek.

20 59. The applicable IWC Wage Order further provides that Defendants are and were
21 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
22 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
23 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
24 employee, including nondiscretionary bonuses and incentive pay.

25 60. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 61. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
5 class members were not paid overtime premiums for all of the hours they worked in excess of
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
7 hours in a week, because all hours worked were not recorded.

8 62. First, during the relevant time period, Defendants had a company-wide policy
9 and/or practice of improperly rounding employees' clock-in and/or clock-out time durations in
10 their timekeeping system to the start and/or end of their scheduled hours, rather than their
11 actual hours worked. For example, if Plaintiff clocked in prior to the start of his scheduled
12 shift time, the timekeeping system would automatically round his time as though he had
13 clocked in at 8:00 a.m., which was the start-time of his scheduled shift. Similarly, when
14 Plaintiff clocked out late, the timekeeping system would automatically round his time as
15 though he had clocked out at his scheduled shift end-time of 4:30 p.m. Moreover, on
16 information and belief, Defendants' timekeeping system rounded employees' clock-in and
17 clock-out duration times to the nearest half (0.5) of an hour. Defendants' timekeeping
18 practices are, and continue to be, unfair and have, over time, resulted in the underpayment of
19 wages to Plaintiff and class members. To the extent Defendants' rounding policy has taken
20 away time worked that was eligible for overtime, Plaintiff and class members were denied
21 overtime pay for all hours worked.

22 63. Second, Defendants had, and continue to have, a company-wide security policy
23 and/or practice requiring employees to leave the warehouse premises together in pairs and/or
24 groups. After clocking out at the end of their shifts, Plaintiff and class members were required
25 to wait for all other employees to complete their own duties before they were released by a
26 managerial employee and could leave Defendants' premises together. For example, Plaintiff
27 would often clock out and then have to wait until his supervisor had closed all warehouse
28 gates and doors and armed the warehouse alarm system, before being released and able to

1 leave the premises. As a result, Plaintiff and class members were subject to Defendants'
2 control after they had clocked out for their shifts, but were not compensated for this time.

3 64. Third, Defendants had, and continue to have, a company-wide policy and/or
4 practice of understaffing their worksites while assigning heavy workloads, including
5 pressuring employees to meet same-day deadlines for rush orders. Defendants' policies
6 and/or practices resulted in a failure to provide Plaintiff and class members with adequate
7 meal period coverage, and thus, Plaintiff and class members were not always afforded
8 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
9 period. For example, Plaintiff's meal periods were interrupted when he was required to assist
10 lumber supply truck drivers who arrived at Defendants' warehouse to drop off inventory
11 during his meal periods.

12 65. Fourth, in conjunction with understaffing their worksites, Defendants had a
13 company-wide practice and/or policy of requiring that Plaintiff and class members carry and
14 respond to company-issued radios at all times, including during meal periods. For example,
15 Plaintiff would often have his meal periods interrupted and/or shortened to discuss work-
16 related tasks with Defendants' managers on his company-issued radio. Defendants knew or
17 should have known that Plaintiff and class members were performing work while off-the-
18 clock, during their meal periods, but failed to compensate them for this time. Thus, Plaintiff
19 and class members missed meal periods and/or had meal periods interrupted in order to
20 complete their assigned workloads and meet productivity expectations. Defendants did not
21 compensate Plaintiff and class members for the time they spent working off the clock during
22 meal periods.

23 66. Fifth, on information and belief, because Defendants frowned upon employees
24 accruing meal period penalties, Defendants' management pressured employees to clock out
25 for meal periods and/or adjusted Plaintiff's and class members' time records to reflect
26 compliant meal periods, regardless of whether they had received a compliant meal period or
27 not, in order to strictly limit the meal penalties that would need to be paid by Defendants.
28 Furthermore, on information and belief, Defendants' company-wide timekeeping system

1 prevented Plaintiff and class members from recording all hours worked when their meal
2 periods were shortened or interrupted, because the system locked out Plaintiff and class
3 members once they clocked out for a meal period, and would not permit them to clock back in
4 from a meal period before 30 minutes had elapsed. Thus, Defendants did not record all hours
5 worked during meal periods, and Plaintiff and class members performed work during meal
6 periods for which they were not paid.

7 67. Defendants knew or should have known that as a result of these company-wide
8 practices and/or policies, Plaintiff and class members were performing their assigned duties
9 off-the-clock before and after their shifts and/or during meal periods, and were suffered or
10 permitted to perform work for which they were not paid. Because Plaintiff and class members
11 worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of
12 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
13 members were not paid overtime wages for all of the overtime hours they actually worked.

14 68. Defendants' failure to pay Plaintiff and class members the balance of overtime
15 compensation as required by California law, violates the provisions of California Labor Code
16 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
17 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
18 and attorneys' fees.

19 **SECOND CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 21 **Minimum Wages** 22 **(Against all Defendants)**

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

25 70. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
26 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
27 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
28 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the

1 time during which an employee is subject to the control of an employer, and includes all the
2 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
3 Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

4 71. As set forth above, Defendants had a company-wide policy and/or practice of
5 rounding Plaintiff’s and class members’ hourly clock-in and/or clock-out time durations in
6 their timekeeping system to the start and/or end of their scheduled shift times and to the
7 nearest half hour, resulting in the failure to compensate them for all hours worked.
8 Additionally, as stated, because Defendants maintained a company-wide security policy
9 and/or practice that required Plaintiff and class members to leave the premises together in
10 pairs and/or groups, Plaintiff and class members had to wait for all other employees to
11 complete their duties before could leave Defendants’ premises, after already having clocked
12 out at the end of their shifts.

13 72. As also stated above, due to Defendants’ policies and/or practices of
14 understaffing their worksites while assigning heavy workloads and requirement that
15 employees carry and respond to their company-issued radios during unpaid meal periods,
16 Plaintiff and class members were impeded from taking all uninterrupted meal periods to which
17 they were entitled and were required to work off-the-clock during meal periods. Moreover, as
18 stated, in order to prevent employees from accruing meal period penalties, upon information
19 and belief, Defendants’ management pressured employees to clock out for meal periods and/or
20 adjusted Plaintiff’s and class members’ time records to reflect compliant meal periods, even
21 when meal periods were missed, short, and/or interrupted. Furthermore, as also stated,
22 Defendants systematically failed to pay Plaintiff and class members for actual hours worked
23 during unpaid meal periods, because Defendants’ timekeeping system locked out Plaintiff and
24 class members for 30 minutes when they clocked out for a meal period.

25 73. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
26 and class members. To the extent that these off-the-clock hours did not qualify for overtime
27 premium payment, Defendants did not pay at least minimum wages for those hours worked
28 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and

1 1198.

2 74. Defendants' failure to pay Plaintiff and class members minimum wages violates
3 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
4 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
5 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

6 **THIRD CAUSE OF ACTION**

7 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**
8 **Violations**
9 **(Against all Defendants)**

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

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

19 77. At all relevant times herein set forth, California Labor Code sections 226.7,
20 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
21 meal period mandated by an applicable order of the IWC.

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

1 79. First, during the relevant time period, as stated, Defendants had, and continue
2 to have, a company-wide policy and/or practice of understaffing while assigning heavy
3 workloads, including pressure to meet same-day deadlines for rush orders, which has resulted
4 in a lack of meal period coverage and prevented Plaintiff and class members from taking all
5 uninterrupted meal periods to which they were entitled.

6 80. Second, as stated, Defendants had, and continue to have, a company-wide
7 policy and/or practice of requiring that Plaintiff and class members carry a company-issued
8 radio to respond to requests at all times, including during meal periods. Defendants'
9 management contacted Plaintiff and class members on their company-issued radios during
10 meal periods to discuss work-related matters. For example, Plaintiff often had his meal
11 periods interrupted and/or shortened by his manager calling on his company-issued radio to
12 discuss work-related tasks, such as to notify him that a lumber supply trailer had arrived to the
13 warehouse.

14 81. Third, as set forth above, on information and belief, because Defendants
15 frowned upon employees accruing meal period penalties, Defendants' management pressured
16 employees to clock out for meal periods and/or adjusted Plaintiff's and class members' time
17 records to reflect compliant meal periods, regardless of whether they had received a compliant
18 meal period or not, in order to strictly limit the meal penalties that would need to be paid by
19 Defendants. Further, as stated, Defendants' company-wide timekeeping system prevented
20 Plaintiff and class members from recording all hours worked when their meal periods were
21 shortened or interrupted, because the system locked out Plaintiff and class members once they
22 clocked out for a meal period, and would not permit them to clock back in from a meal period
23 before 30 minutes had elapsed. Plaintiff and class members did not sign valid meal period
24 waivers on days that they were entitled to meal periods and were not relieved of all duties.

25 82. Moreover, Defendants had a company-wide policy of requiring all newly hired
26 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
27 the position that non-exempt, hourly paid employees had waived their rights to first and/or
28 second meal periods for the entirety of their employment and, on that basis, did not provide

1 them with all meal periods to which they were entitled. Moreover, Defendants' meal period
2 waiver form requires employees provide written notice should they wish to revoke the waiver.
3 Defendants' presumption that meal periods would not be provided for shifts in excess of five
4 (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than
5 twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and
6 imposition on employees to revoke the waivers in writing, discouraged and impeded Plaintiff
7 and class members from taking all meal periods to which they were entitled.

8 83. Furthermore, an employer's obligation to provide a meal period is only
9 "triggered" when the employer "employs an employee for a work period of more than five
10 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
11 anyone to work for a full five hours, its meal break obligation is triggered.").

12 [A]fter the meal break obligation is triggered . . . an employer is put to a
13 choice: it must (1) afford an off-duty meal period; (2) consent to a
14 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
15 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

16 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
17 required Plaintiff and class members to sign meal period waivers simultaneously at or near
18 their time of hire (as opposed to on a specific work day) renders them invalid and
19 unenforceable, because Defendants' obligation to provide Plaintiff and class members with
20 meal periods did not arise until they had employed them for a full five (5) hours.

21 84. At all times herein mentioned, Defendants knew or should have known that, as
22 a result of these policies, Plaintiff and class members were prevented from being relieved of
23 all duties and required to perform some of their assigned duties during meal periods.
24 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
25 members meal period premiums when meal periods were late, interrupted, shortened, and/or
26 missed.

27 85. As set forth above, Defendants have a company-wide policy and/or practice of
28 rounding employee clock-in and clock-out times in their timekeeping system, which prevented

1 Plaintiff and class members from receiving all meal period premiums when they took late
2 and/or shortened meal periods. As stated, Defendants' rounding policy rounded employees'
3 clock-in and clock-out duration times in their timekeeping system to the nearest half (0.5) of
4 an hour. To the extent that Defendants' timekeeping system reported that Plaintiff and class
5 members were provided with timely, full 30-minute meal periods when, in fact, the meal
6 periods were taken after the fifth hour of work or were less than 30 minutes, Plaintiff and class
7 members were entitled to a meal period penalty. Thus, Plaintiff and class members did not
8 receive meal period penalties for these improperly rounded meal periods.

9 86. Moreover, Defendants engaged in a company-wide practice and/or policy of
10 not paying all meal period premiums owed when compliant meal periods are not provided.
11 Because of this practice and/or policy, Plaintiff and class members have not received premium
12 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
13 Plaintiff and class members compliant meal periods in violation of California Labor Code
14 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

15 87. Defendants' conduct violates the applicable IWC Wage Order, and California
16 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
17 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
18 rate of compensation for each work day that the meal period was not provided.

19 **FOURTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 21 **(Against all Defendants)**

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

24 89. At all relevant times herein set forth, the applicable IWC Wage Order and
25 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
26 members' employment by Defendants.

27 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
28 employer shall authorize and permit all employees to take rest periods, which insofar as

1 practicable shall be in the middle of each work period” and that the “rest period time shall be
2 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
3 hours or major fraction thereof” unless the total daily work time is less than three and one-half
4 (3 ½) hours.

5 91. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any rest period mandated by an applicable
7 order of the California IWC. To comply with its obligation to authorize and permit rest
8 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
9 employer must “relinquish any control over how employees spend their break time, and
10 relieve their employees of all duties—including the obligation that an employee remain on
11 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
12 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
13 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
14 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
15 that a required rest period was not authorized and permitted.

16 92. During the relevant time period, Defendants regularly failed to authorize and
17 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
18 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
19 practices of understaffing while assigning heavy workloads and deadlines for rush orders, and
20 their requirement that employees carry a company-issued radio at all times, including during
21 rest periods, prevented Plaintiff and class members from being relieved of all duty to take rest
22 periods. Additionally, Defendants failed to adhere to a schedule for rest periods, which,
23 coupled with Defendants’ failure to provide adequate rest period coverage, further led to
24 Plaintiff and class members not being authorized and permitted to take rest periods.

25 93. Furthermore, Defendants maintained and implemented a company-wide on-
26 premises rest period policy, which mandated that Plaintiff and class members remain on the
27 premises during their rest periods. Because Plaintiff and class members were restricted from
28 leaving Defendants’ premises during rest periods, they were denied the ability to use their rest

1 periods freely for their own purposes, such as completing personal errands. Thus, Defendants
2 effectively maintained control over Plaintiff and class members during rest periods.

3 94. As a result of Defendants' practices and policies, Plaintiff and class members
4 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
5 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
6 Plaintiff often had to forego his rest periods because of the heavy workload. When Plaintiff
7 was able to take his rest periods, they were often interrupted by his supervisor on his
8 company-issued radio.

9 95. Defendants have also engaged in a company-wide practice and/or policy of not
10 paying all rest period premiums owed when compliant rest periods are not authorized and
11 permitted. Because of this practice and/or policy, Plaintiff and class members have not
12 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
13 class members rest periods and failed to pay them rest period premiums due, in violation of
14 Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

15 96. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
17 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
18 compensation for each work day that a compliant rest period was not authorized and
19 permitted.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 22 **Statements and Failure to Maintain Accurate Payroll Records** 23 **(Against all Defendants)**

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

26 98. At all relevant times herein set forth, California Labor Code section 226(a)
27 provides that every employer shall furnish each of his or her employees an accurate and
28 complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total
2 hours worked, and all applicable rates of pay.

3 99. At all relevant times, Defendants have knowingly and intentionally provided
4 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
5 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
6 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
7 applicable hourly rates in effect during the pay period, including rates of pay for overtime
8 wages and/or meal and rest period premiums, and the corresponding number of hours worked
9 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
10 and 226(a)(9).

11 100. Because Defendants did not record the time Plaintiff and Subclass members
12 spent working off the clock, improperly rounded their total hours worked, and deducted time
13 from their records for meal periods that were interrupted and/or missed (and therefore time for
14 which they should have been paid), Defendants did not list the correct amount of gross wages
15 and net wages earned by Plaintiff and Subclass members in compliance with sections
16 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
17 number of hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2),
18 and failed to list the applicable hourly rates of pay in effect during the pay period and the
19 corresponding accurate number of hours worked at each hourly rate, in violation of section
20 226(a)(9).

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

1 102. California Labor Code section 1174(d) provides that “[e]very person employing
2 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
3 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
4 plants or establishments at which employees are employed, payroll records showing the hours
5 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
6 applicable piece rate paid to, employees employed at the respective plants or
7 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
8 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
9 members showing the daily hours they worked and the wages paid thereto as a result of failing
10 to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and
11 Subclass members’ total hours worked.

12 103. California Labor Code section 1198 provides that the maximum hours of work
13 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
14 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
15 employment of any employees for longer hours than those fixed by the order or under
16 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
17 Wage Order, employers are required to keep accurate time records showing when the
18 employee begins and ends each work period and meal period. During the relevant time
19 period, Defendants engaged in company-wide practices and/or policies of failing to record
20 actual hours worked (including falsifying time records by recording that compliant meal
21 periods were taken regardless of if or when meal periods were actually taken), and thereby
22 failed, on a company-wide basis, to keep accurate records of work period and meal period
23 start and stop times for Plaintiff and Subclass members, in violation of section 1198.
24 Plaintiff and Subclass members are entitled to recover from Defendants the greater of their
25 actual damages caused by Defendants’ failure to comply with California Labor Code section
26 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

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SIXTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

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

105. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

106. At all times relevant herein set forth, 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.

107. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants 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 Defendants' employ.

108. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

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SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

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

110. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and class members during their employment.

111. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

112. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

113. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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.

114. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums within the time periods specified by California Labor

1 Code section 204.

2 115. Defendants' failure to pay Plaintiff and class members all wages due violates
3 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
4 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

5 **EIGHTH CAUSE OF ACTION**

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

7 **(Against all Defendants)**

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

10 117. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
11 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
12 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
13 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits
14 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
15 Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

16 118. Defendants' conduct, as alleged herein, violates numerous sections of the
17 California Labor Code, including, but not limited to, the following:

- 18 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
19 Wage Order for Defendants' failure to compensate Plaintiff and other
20 aggrieved employees with all required overtime pay, as alleged herein;
- 21 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
22 1198, and the applicable IWC Wage Order for Defendants' failure to
23 compensate Plaintiff and other aggrieved employees with at least
24 minimum wages for all hours worked, as alleged herein;
- 25 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
26 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
27 and other aggrieved employees with meal periods, as alleged herein;
- 28 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to authorize and
2 permit Plaintiff and other aggrieved employees to take rest periods, as
3 alleged herein;

4 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
5 IWC Wage Order for failure to provide accurate and complete wage
6 statements to Plaintiff and other aggrieved employees, as alleged herein;

7 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
8 IWC Wage Order for failure to maintain payroll records, as alleged
9 herein;

10 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
11 earned wages upon termination, as alleged herein; and

12 (h) Violation of Labor Code section 204 for failure to pay all earned wages
13 during employment, as alleged herein.

14 119. Therefore, Plaintiff and other aggrieved employees are entitled to recover civil
15 penalties pursuant to Labor Code section 2699(a), (f), and (g).

16 **NINTH CAUSE OF ACTION**

17 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

18 **Unlawful Business Practices**

19 **(Against all Defendants)**

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

22 121. Defendants are "persons" as defined by California Business & Professions
23 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
24 and/or associations.

25 122. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
26 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
27 suffered injury in fact and has lost money as a result of Defendants' unlawful business
28 practices. Plaintiff seeks to enforce important rights affecting the public interest within the

1 meaning of Code of Civil Procedure section 1021.5.

2 123. Defendants' activities, as alleged herein, are violations of California law, and
3 constitute unlawful business acts and practices in violation of California Business &
4 Professions Code sections 17200, *et seq.*

5 124. A violation of California Business & Professions Code sections 17200, *et seq.*
6 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
7 policies and practices have violated state law in at least the following respects:

- 8 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
9 class members, to work overtime without paying them proper
10 compensation in violation of California Labor Code sections 510 and
11 1198 and the applicable IWC Wage Order, as alleged herein;
- 12 (b) Failing to pay at least minimum wage to Plaintiff and class members in
13 violation of California Labor Code sections 1182.12, 1194, 1197,
14 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
15 herein;
- 16 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
17 members in violation of California Labor Code sections 226.7, 512(a),
18 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 19 (d) Failing to authorize and permit Plaintiff and class members to take
20 uninterrupted rest periods in violation of California Labor Code sections
21 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
22 herein;
- 23 (e) Failing to provide Plaintiff and class members with accurate wage
24 statements and failing to maintain accurate payroll records in violation
25 of California Labor Code sections 226(a), 1174(d), and 1198, and the
26 applicable IWC Wage Order, as alleged herein; and
- 27 (f) Failing timely to pay all earned wages to Plaintiff and class members in
28 violation of California Labor Code section 204, as alleged herein.

125. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

126. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

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

128. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

129. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

130. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy

provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

131. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest period laws and constitute acts against the public policy behind these laws.

132. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representative of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

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

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

//

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

1 28. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

3 29. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Fifth Cause of Action**

6 30. That the Court declare, adjudge and decree that Defendants violated the
7 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
8 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
9 itemized wage statements thereto;

10 31. For all actual, consequential, and incidental losses and damages, according to
11 proof;

12 32. For injunctive relief pursuant to California Labor Code section 226(h);

13 33. For statutory penalties pursuant to California Labor Code section 226(e);

14 34. For attorneys' fees and costs pursuant to California Labor Code section
15 226(e)(1); and

16 35. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Sixth Cause of Action**

19 36. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
21 and/or meal and rest period premiums owed at the time of termination of the employment of
22 Plaintiff and other terminated class members;

23 37. For all actual, consequential and incidental losses and damages, according to
24 proof;

25 38. For waiting time penalties according to proof pursuant to California Labor
26 Code section 203 for all employees who have left Defendants' employ;

27 39. For pre-judgment interest on any unpaid wages from the date such amounts
28 were due, or as otherwise provided by law;

1 40. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

3 41. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Seventh Cause of Action**

6 42. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
8 overtime wages, minimum wages, and/or meal and rest period premiums during their
9 employment;

10 43. For all actual, consequential and incidental losses and damages, according to
11 proof;

12 44. For statutory penalties according to proof pursuant to California Labor Code
13 section 210;

14 45. For pre-judgment interest on any unpaid wages from the date such amounts
15 were due, or as otherwise provided by law;

16 46. For attorneys' fees pursuant to California Code of Civil Procedure section
17 1021.5, or as otherwise provided by law; and

18 47. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Eighth Cause of Action**

21 48. That the Court declare, adjudge and decree that Defendants violated the
22 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
23 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
24 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
25 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
26 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
27 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
28 earned wages upon termination); and 204 (by failing to timely pay all earned wages during

employment);

49. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

50. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

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

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

As to the Ninth Cause of Action

53. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, and failing to timely pay Plaintiff and class members all earned wages during employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

54. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

55. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

1 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5; and

3 57. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Tenth Cause of Action**

6 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
7 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
8 an unfair business practice in violation of California Business and Professions Code sections
9 17200, *et seq.*;

10 59. For restitution of the statutory benefits under section 226.7 unfairly withheld
11 from Plaintiff and class members and prejudgment interest from the day such amounts were
12 due and payable;

13 60. For the appointment of a receiver to receive, manage, and distribute any and all
14 funds disgorged from Defendants and determined to have been wrongfully acquired by
15 Defendants as a result of violations of California Business & Professions Code sections
16 17200, *et seq.*;

17 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Code of Civil Procedure section 1021.5;

19 62. For pre-judgment and post-judgment interest as provided by law; and
20 For such other and further relief as the Court may deem equitable and appropriate.
21

22 Dated: October 31, 2022

Respectfully submitted,

Capstone Law APC

23
24
25 By: _____



26 Robert Drexler
27 Molly DeSario
28 Jonathan Lee

Attorneys for Plaintiff Norberto Munoz

EXHIBIT “1”



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August 25, 2022

VIA ONLINE SUBMISSION

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

Subject: *Norberto Munoz v. Mendocino Forest Products Company, LLC, et al.*

Dear PAGA Administrator:

This office represents Norberto Munoz in connection with his claims under the California Labor Code. Mr. Munoz was an employee of MENDOCINO FOREST PRODUCTS COMPANY, LLC; HUMBOLDT REDWOOD COMPANY, LLC; MENDOCINO REDWOOD COMPANY, LLC; and/or ALLWEATHER WOOD, LLC. For the purpose of this letter, Mr. Munoz collectively refers to these entities as "MENDOCINO."

The employers may be contacted directly at the addresses below:

MENDOCINO FOREST PRODUCTS
COMPANY, LLC
3700 OLD REDWOOD HIGHWAY
SANTA ROSA, CA 95403

HUMBOLDT REDWOOD COMPANY, LLC
3700 OLD REDWOOD HIGHWAY
SANTA ROSA, CA 95403

MENDOCINO REDWOOD COMPANY, LLC
3700 OLD REDWOOD HWY
SANTA ROSA, CA 95403

ALLWEATHER WOOD, LLC
3700 OLD REDWOOD HIGHWAY, SUITE 200
SANTA ROSA, CA 95403

Mr. Munoz intends to seek civil penalties, attorney's 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. Munoz seeks relief on behalf of himself, the State of California, and other persons who are or were employed by MENDOCINO 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.

MENDOCINO employed Mr. Munoz as an hourly paid, non-exempt employee from approximately February 2022 to February 2022. Mr. Munoz worked for MENDOCINO as a Warehouse Laborer at its facility in Fontana, California. During his employment, Mr. Munoz typically worked eight (8)

hours or more per day and five (5) days per week. At the time his employment ended, Mr. Munoz was compensated approximately \$21.22 per hour. Mr. Munoz's primary job duties included, without limitation, preparing lumber orders for customers, operating forklifts, and handling the shipping and receiving of inventory.

MENDOCINO committed one or more of the following Labor Code violations against Mr. Munoz, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

MENDOCINO's Company-Wide and Uniform Payroll and HR Practices

MENDOCINO FOREST PRODUCTS COMPANY, LLC; HUMBOLDT REDWOOD COMPANY, LLC; MENDOCINO REDWOOD COMPANY, LLC; and ALLWEATHER WOOD, LLC are Delaware limited liability companies. Together, they are leading manufacturers and distributors of top-quality redwood and Douglas-fir lumber products. Upon information and belief, MENDOCINO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Santa Rosa, California, for all non-exempt, hourly paid employees working for MENDOCINO in California, including Mr. Munoz and other aggrieved employees. At all relevant times, MENDOCINO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Munoz and other aggrieved employees, regardless of their location or position.

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

¹ These facts, theories, and claims are based on Mr. Munoz's experience and counsel's review of those records currently available relating to Mr. Munoz'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. Munoz 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.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

MENDOCINO willfully failed to pay all overtime wages owed to Mr. Munoz and other aggrieved employees. During the relevant time period, Mr. Munoz 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 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, MENDOCINO had a company-wide policy and/or practice of improperly rounding employees' clock-in and/or clock-out time durations in its timekeeping system to the start and/or end of their scheduled hours, rather than their actual hours worked. For example, if Mr. Munoz clocked in prior to the start of his scheduled shift time, the timekeeping system would automatically round his time as though he had clocked in at 8:00 a.m., which was the start-time of his scheduled shift. Similarly, when Mr. Munoz clocked out late, the timekeeping system would automatically round his time as though he had clocked out at his scheduled shift end-time of 4:30 p.m. Moreover, on information and belief, MENDOCINO's timekeeping system rounded employees' clock-in and clock-out duration times to the nearest half (0.5) of an hour. MENDOCINO's timekeeping practices are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Mr. Munoz and other aggrieved employees. To the extent MENDOCINO's rounding policy has taken away time worked that was eligible for overtime, Mr. Munoz and other aggrieved employees were denied overtime pay for all hours worked.

Second, MENDOCINO had, and continues to have, a company-wide security policy and/or practice requiring employees to leave the warehouse premises together in pairs and/or groups. After clocking out at the end of their shifts, Mr. Munoz and other aggrieved employees were required to wait for all other employees to complete their own duties before they were released by a managerial employee and could leave MENDOCINO's premises together. For example, Mr. Munoz would often clock out and then have to wait until his supervisor had closed all warehouse gates and doors and armed the warehouse alarm system, before being released and able to leave the premises. As a result, Mr. Munoz and other aggrieved employees were subject to MENDOCINO's control after they had clocked out for their shifts, but were not compensated for this time.

Third, MENDOCINO had a company-wide policy and/or practice of discouraging and impeding other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. For example, on information and belief, other aggrieved employees were required to attend training sessions before their scheduled shifts, which took around 2-4 hours to complete, but they were not permitted to clock in until their scheduled shift start-times. MENDOCINO failed to track this time other aggrieved employees spent working off-the-clock, and thus, other aggrieved employees received no compensation for this time.

Fourth, MENDOCINO had, and continues to have, a company-wide policy and/or practice of understaffing its worksites while assigning heavy workloads, including pressuring employees to meet same-day deadlines for rush orders. MENDOCINO's policies and/or practices resulted in a failure to provide Mr. Munoz and other aggrieved employees with adequate meal period coverage, and thus, Mr. Munoz and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Munoz's meal periods were interrupted when he was required to assist lumber supply truck drivers who arrived at MENDOCINO's warehouse to drop off inventory during his meal periods.

Fifth, in conjunction with understaffing its worksites, MENDOCINO had a company-wide practice and/or policy of requiring that Mr. Munoz and other aggrieved employees carry and respond to company-issued radios at all times, including during meal periods. For example, Mr. Munoz would often have his meal periods interrupted and/or shortened to discuss work-related tasks with MENDOCINO's managers on his company-issued radio. MENDOCINO knew or should have known that Mr. Munoz and other aggrieved employees were performing work while off-the-clock, during their meal periods, but failed to compensate them for this time. Thus, Mr. Munoz and other aggrieved employees missed meal periods and/or had meal periods interrupted in order to complete their assigned workloads and meet productivity expectations. MENDOCINO did not compensate Mr. Munoz and other aggrieved employees for the time they spent working off the clock during meal periods.

Sixth, on information and belief, because MENDOCINO frowned upon employees accruing meal period penalties, MENDOCINO's management pressured employees to clock out for meal periods and/or adjusted Mr. Munoz'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 would need to be paid by MENDOCINO. Furthermore, on information and belief, MENDOCINO's company-wide timekeeping system prevented Mr. Munoz and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Munoz 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, MENDOCINO did not record all hours worked during meal periods, and Mr. Munoz and other aggrieved employees performed work during meal periods for which they were not paid.

MENDOCINO knew or should have known that as a result of these company-wide practices and/or policies, Mr. Munoz and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Munoz 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. Munoz and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, MENDOCINO did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, MENDOCINO paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, MENDOCINO 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 other aggrieved employees worked overtime and received these other forms of pay, MENDOCINO failed to pay all overtime wages by paying a lower overtime rate than required.

MENDOCINO's failure to pay Mr. Munoz 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. Munoz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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, MENDOCINO had a company-wide policy and/or practice of rounding Mr. Munoz’s and other aggrieved employees’ hourly clock-in and/or clock-out time durations in its timekeeping system to the start and/or end of their scheduled shift times and to the nearest half hour, resulting in the failure to compensate them for all hours worked. Additionally, as stated, because MENDOCINO maintained a company-wide security policy and/or practice that required Mr. Munoz and other aggrieved employees to leave the premises together in pairs and/or groups, Mr. Munoz and other aggrieved employees had to wait for all other employees to complete their duties before could leave MENDOCINO’s premises, after already having clocked out at the end of their shifts. Further, because MENDOCINO discouraged and impeded other aggrieved employees from recording hours worked that were outside of their scheduled shifts, other aggrieved employees were required to work off-the-clock before their scheduled shift start times to attend mandatory training sessions.

As also stated above, due to MENDOCINO’s policies and/or practices of understaffing its worksites while assigning heavy workloads and requirement that employees carry and respond to their company-issued radios during unpaid meal periods, Mr. Munoz 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. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, MENDOCINO’s management pressured employees to clock out for meal periods and/or adjusted Mr. Munoz’s and other aggrieved employees’ time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Furthermore, as also stated, MENDOCINO systematically failed to pay Mr. Munoz and other aggrieved employees for actual hours worked during unpaid meal periods, because MENDOCINO’s timekeeping system locked out Mr. Munoz and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Thus, MENDOCINO did not pay at least minimum wages for all hours worked by Mr. Munoz and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, MENDOCINO 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, MENDOCINO regularly failed to pay at least minimum wages to Mr. Munoz 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. Munoz and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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, MENDOCINO had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressure to meet same-day deadlines for rush orders, which has resulted in a lack of meal period coverage and prevented Mr. Munoz and other aggrieved employees from taking all uninterrupted meal periods to which they were entitled.

Second, as stated, MENDOCINO had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Munoz and other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. MENDOCINO's management contacted Mr. Munoz and other aggrieved employees on their company-issued radios during meal periods to discuss work-related matters. For example, Mr. Munoz often had his meal periods interrupted and/or shortened by his manager calling on his company-issued radio to discuss work-related tasks, such as to notify him that a lumber supply trailer had arrived to the warehouse.

Third, as set forth above, on information and belief, because MENDOCINO frowned upon employees accruing meal period penalties, MENDOCINO's management pressured employees to clock out for meal periods and/or adjusted Mr. Munoz'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 would need to be paid by MENDOCINO. Further, as stated, MENDOCINO's company-wide timekeeping system prevented Mr. Munoz and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Munoz 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.

Fourth, MENDOCINO did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Munoz 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.

Moreover, MENDOCINO had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. MENDOCINO took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, MENDOCINO's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. MENDOCINO's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Munoz and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That MENDOCINO required Mr. Munoz and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because MENDOCINO's obligation to provide Mr. Munoz and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, MENDOCINO knew or should have known that, as a result of these policies, Mr. Munoz and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. MENDOCINO further knew or should have known that MENDOCINO did not pay Mr. Munoz and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

As set forth above, MENDOCINO had a company-wide policy and/or practice of rounding employee clock-in and clock-out times in its timekeeping system, which prevented Mr. Munoz and other aggrieved employees from receiving all meal period premiums when they took late and/or shortened meal periods. As stated, MENDOCINO's rounding policy rounded employees' clock-in and clock-out duration times in its timekeeping system to the nearest half (0.5) of an hour. To the extent that MENDOCINO's timekeeping system reported that Mr. Munoz and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Munoz and other aggrieved employees were entitled to a meal period penalty. Thus, Mr. Munoz and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

Moreover, MENDOCINO 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. Munoz and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that MENDOCINO did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, MENDOCINO did not pay other aggrieved employees at the correct rate of pay for premiums because MENDOCINO 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.

Accordingly, MENDOCINO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Munoz and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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, 269-270 (2016).

During the relevant time period, MENDOCINO regularly failed to authorize and permit Mr. Munoz 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, MENDOCINO's company-wide practices of understaffing while assigning heavy workloads and deadlines for rush orders, and its requirement that employees carry a company-issued radio at all times, including during rest periods, prevented Mr. Munoz and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, MENDOCINO failed to adhere to a schedule for rest periods, which, coupled with MENDOCINO's failure to provide adequate rest period coverage, further led to Mr. Munoz and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, MENDOCINO maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Munoz and other aggrieved employees remain on the premises during their rest periods. Because Mr. Munoz and other aggrieved employees were restricted from leaving MENDOCINO's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, MENDOCINO effectively maintained control over Mr. Munoz and other aggrieved employees during rest periods.

As a result of MENDOCINO's practices and policies, Mr. Munoz 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 10-minute rest periods to which they were entitled. For example, Mr. Munoz often had to forego his rest periods because of the heavy workload. When Mr. Munoz was able to take his rest periods, they were often interrupted by his supervisor on his company-issued radio.

MENDOCINO has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Munoz and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that MENDOCINO did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, MENDOCINO did not pay other aggrieved employees at the correct rate of pay for premiums because MENDOCINO 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.

Accordingly, MENDOCINO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Munoz and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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. MENDOCINO has not provided Mr. Munoz 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, MENDOCINO has knowingly and intentionally provided Mr. Munoz and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MENDOCINO issued uniform wage statements to Mr. Munoz 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, MENDOCINO violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because MENDOCINO did not record the time Mr. Munoz and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, 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), MENDOCINO did not list the correct amount of gross wages and net wages earned by Mr. Munoz and other aggrieved employees in compliance with section 226(a)(1) and

section 226(a)(5), respectively. For the same reason, MENDOCINO failed to accurately list the total number of hours worked by Mr. Munoz 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).

Additionally, because MENDOCINO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, MENDOCINO did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). MENDOCINO 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 the hours they 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), MENDOCINO willfully failed to maintain accurate payroll records for Mr. Munoz 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 and improperly rounding Mr. Munoz's and other aggrieved employees' total hours 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, MENDOCINO engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Munoz and other aggrieved employees, in violation of section 1198. Furthermore, in light of MENDOCINO's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, MENDOCINO kept no records of meal start and end times for second meal periods.

Because MENDOCINO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Munoz 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. Munoz 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. Munoz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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, MENDOCINO failed to pay Mr. Munoz 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. Munoz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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.

MENDOCINO willfully failed to pay Mr. Munoz and other aggrieved employees who are no longer employed by MENDOCINO all their earned wages, 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 MENDOCINO's employ.

Mr. Munoz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

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.” MENDOCINO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Munoz’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Munoz 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 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Munoz, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against MENDOCINO 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, and 1198.

Therefore, on behalf of all aggrieved employees, Mr. Munoz 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:

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

Best Regards,


Anthony Castillo

Copy: MENDOCINO FOREST PRODUCTS COMPANY, LLC (via U.S. Certified Mail);
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REDWOOD COMPANY, LLC (via U.S. Certified Mail); ALLWEATHER WOOD, LLC (via U.S.
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1. Article Addressed to:

ALLWEATHER WOOD, LLC
3700 OLD REDWOOD HIGHWAY,
SUITE 200
SANTA ROSA, CA 95403



9590 9402 7420 2055 3566 58

2. Article Number (Transfer from service label)

7021 1970 0001 8870 3747

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$

Total

ALLWEATHER WOOD, LLC
3700 OLD REDWOOD HIGHWAY,
SUITE 200
SANTA ROSA, CA 95403

Sent 1

Street

City, State

Zip, ZIP+4

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

NOV 02 11 00 AM
Postmark
Here

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X Agent Addressee B. Received by (Printed Name) C. Date of Delivery 8-24-22 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
HUMBOLDT REDWOOD COMPANY, LLC 3700 OLD REDWOOD HIGHWAY SANTA ROSA, CA 95403			
 9590 9402 7420 2055 3566 72		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X Agent Addressee B. Received by (Printed Name) C. Date of Delivery 8-24-22 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
MENDOCINO FOREST PRODUCTS COMPANY, LLC 3700 OLD REDWOOD HIGHWAY SANTA ROSA, CA 95403			
 9590 9402 7420 2055 3565 97		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (\$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

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■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X Agent Addressee B. Received by (Printed Name) C. Date of Delivery 8-24-22 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
MENDOCINO REDWOOD COMPANY, LLC 3700 OLD REDWOOD HWY SANTA ROSA, CA 95403			
 9590 9402 7420 2055 3566 65		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (\$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X Agent Addressee B. Received by (Printed Name) C. Date of Delivery 8-24-22 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
ALLWEATHER WOOD, LLC 3700 OLD REDWOOD HIGHWAY, SUITE 200 SANTA ROSA, CA 95403			
 9590 9402 7420 2055 3566 58		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

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 **October 31, 2022**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** 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:

Jenn Bautista
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Agent for Defendants
MENDOCINO FOREST PRODUCTS
COMPANY, LLC; HUMBOLDT
REDWOOD COMPANY, LLC;
MENDOCINO REDWOOD COMPANY,
LLC, ; ALLWEATHER WOOD, 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 FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal 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 **October 31, 2022** at Los Angeles, California.

Sophia Flores
Type/Print Name


Signature