

Armond M. Jackson, SBN 281547
Andrea M. Fernandez, SBN 295924
Jackson Law, APC
2913 El Camino Real #342
Tustin, California 92782
Phone (949) 281-6857
Fax (949) 777-6218

Attorneys for Plaintiff Delfino Munoz

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OF ORIGINAL FILED
Los Angeles Superior Court

APR 21 2016

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

**SUPERIOR COURT OF STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES- STANLEY MOSK COURTHOUSE**

DELFINO MUNOZ, as an individual and on
behalf of the California Labor Commissioner
as the California Private Attorney General,

Plaintiff,

vs.

BATTEN DOWN, INC, a California
corporation, JLA, Inc., a California
corporation, GARAGE PIZZA (business entity
unknown), BAZAAR PIZZA INC., a
California corporation, JASON BATTEN, an
individual, and DOES 1-50, inclusive,

Defendant.

Case No.:

BC 617880

COMPLAINT FOR:

- 1. CLAIM FOR FAILURE TO PROVIDE AND MAINTAIN ACCURATE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS (LAB. CODE §§ 226(a), 1174, & 1198; IWC WAGE ORDER 5, SECTION 7 "RECORDS")**
- 2. PAGA CLAIM FOR FAILURE TO PROVIDE AND MAINTAIN ACCURATE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS (LAB. CODE §§ 226(a), 1174, & 1198; IWC WAGE ORDER 5, SECTION 7 "RECORDS")**
- 3. PAGA CLAIM FOR FAILURE TO MAINTAIN RECORDS (LAB. CODE §§ 1174 & 1198; IWC WAGE ORDER 5, SECTION 7 "RECORDS")**
- 4. CLAIM FOR FAILURE TO PROVIDE MEAL BREAKS (IWC WAGE ORDER 5, SECTION 11)**
- 5. PAGA CLAIM FOR FAILURE TO PROVIDE MEAL BREAKS**

**(IWC WAGE ORDER 5,
SECTION 11)**

- 6. CLAIM FOR FAILURE TO
PROVIDE REST PERIODS (IWC
WAGE ORDER 5, SECTION 12)**
- 7. PAGA CLAIM FOR FAILURE
TO PROVIDE REST PERIODS
(IWC WAGE ORDER 5,
SECTION 12)**
- 8. CLAIM FOR FAILURE TO PAY
OVERTIME (LAB. CODE §§ 510,
1198 AND IWC WAGE ORDER 9,
§ 3)**
- 9. PAGA CLAIM FOR FAILURE
TO PAY OVERTIME (LAB.
CODE §§ 510, 1198 AND IWC
WAGE ORDER 9, § 3)**
- 10. VIOLATION OF THE
CALIFORNIA FAIR
EMPLOYMENT AND HOUSING
ACT (GOV'T CODE, § 12940
(a))—DISABILITY
DISCRIMINATION**
- 11. VIOLATION OF THE
CALIFORNIA FAIR
EMPLOYMENT AND HOUSING
ACT (GOV'T CODE, § 12940
(h))—RETALIATION**
- 12. VIOLATION OF THE
CALIFORNIA FAIR
EMPLOYMENT AND HOUSING
ACT (GOV'T CODE, §
12940(k))—FAILURE TO
PREVENT**
- 13. VIOLATION OF THE
CALIFORNIA FAIR
EMPLOYMENT AND HOUSING
ACT (GOV'T CODE, § 12940
(m))—FAILURE TO
ACCOMMODATE**
- 14. VIOLATION OF THE
CALIFORNIA FAIR
EMPLOYMENT AND HOUSING
ACT (GOV'T CODE, § 12940**

(n))—FAILURE TO ENGAGE IN
TIMELY GOOD FAITH, ,
INTERACTIVE PROCESS

15. RETALIATION (LABOR CODE
SECTION 1102.5)

16. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC
POLICY

17. UNLAWFUL BUSINESS
PRACTICES UNDER (BUS. AND
PROF. CODE, § 17200, ET SEQ.)

18. VIOLATION OF THE UNIFORM
FRAUDULENT TRANSFER ACT
(CIVIL CODE, SECTION 3439.04
ET SEQ); AND

19. SUCCESSOR CORPORATION
LIABILITY

[JURY DEMAND]

1 Plaintiff Delfino Munoz (“Plaintiff” or “Mr. Munoz”) makes the following allegations
2 against Defendant, Batten Down, Inc. JLA, Inc., Garage Pizza, Inc.. Bazaar Pizza, Inc. and
3 Jason Batten:

4 **GENERAL ALLEGATIONS**

5 **Parties and Venue.**

6 1. Plaintiff is, and at all relevant times was, a citizen and resident of the city of Stanton, in
7 the County of Orange, in the State of California.

8 2. Plaintiff is informed and believes and on that basis alleges that at all relevant times
9 Defendant Batten Down Inc. (hereinafter referred to as “BDI”) is a California corporation doing
10 business in the State of California with a principal place of business located at 4339 ½ W. Sunset
11 Blvd, Los Angeles, CA 90029.

12 3. Plaintiff is informed and believes and on that basis alleges that at all relevant times
13 Defendant JLA Inc. (hereinafter referred to as “JLA”) is a California corporation doing business
14 in the State of California with a principal place of business located at 100 ½ West 7th Street, Los
15 Angeles, CA 90014.

16 4. Plaintiff is informed and believes and on that basis alleges that at all relevant times
17 Defendant Garage Pizza (hereinafter referred to as “Garage”) is a business entity unknown doing
18 business in the State of California with a principal place of business located at 4339 Sunset
19 Boulevard, Silverlake, California 90029.

20 5. Plaintiff is informed and believes and on that basis alleges that at all relevant times
21 Defendant Bazaar Pizza, Inc. (hereinafter referred to as “BPI”) is a California corporation doing
22 business in the State of California with a principal place of business located at 1218 Glendale
23 Ave, Apt. 56, Glendale, CA 91205.

24 6. Plaintiff is informed and believes and on that basis alleges that at all relevant times
25 Defendant Jason Batten. (hereinafter referred to as “JB”) is an individual residing in California
26 and sole shareholder of BD, JLA and owner of Garage Pizza.

1 7. In light of the facts that the wrongful acts of this defendant occurred and the causes
2 against them arose in Los Angeles County, State of California, jurisdiction and venue is proper
3 in Los Angeles County Superior Court.
4

5 **Doe Allegations.**

6 8. Plaintiff does not presently know the true names and capacities of defendant named as
7 Doe 1 through Doe 50, inclusive. Plaintiff will amend this complaint, setting forth the true
8 names and capacities of these fictitious defendants, when they are ascertained. Plaintiff is
9 informed and believes and on that basis alleges that each of the fictitious defendants have
10 participated in the acts alleged in this complaint to have been done by the named defendants.
11

12 **Vicarious Liability.**

13 9. Unless otherwise indicated, each defendant herein sued is the agent, co-conspirator, joint
14 venturer, partner, and/or employee of every other defendant and, as alleged, has been acting
15 within the course and scope of said agency, conspiracy, joint venture, partnership, and/or
16 employment, with the knowledge and/or consent of co-defendants, and each of them. Plaintiff is
17 informed and believes and thereon alleges that each defendant has authorized and/or ratified the
18 wrongful activities of each of the remaining defendants.

19 10. The corporation defendant's conduct was undertaken by its officers, managing agents and
20 other persons responsible for supervision of employees and for the drafting and implementation
21 of policies and other managerial decisions. The conduct of the officers, managing agents, and
22 other individuals was on behalf of the Corporate Defendants. Further, the Corporate Defendants
23 had advance knowledge of such conduct of said individuals whose actions and conduct were
24 ratified, authorized, approved and/or known by the Corporate Defendants officers and managing
25 agents.
26
27
28

1 **Alter Ego Liability.**

2 11. Plaintiff alleges that Defendant and Defendants Does 1 through 50, inclusive, (hereinafter
3 collectively referred to as "Defendant Shareholders") are, and at all times herein mentioned
4 were, shareholders of the stock of Corporate Defendants BDI, JLI and BPI and/or promoters of
5 Corporate Defendants BDI, JLI and BPI and/or subscribers of stock therein, There exists, and at
6 all times herein mentioned existed, a unity of interest between Defendant Shareholders and
7 Corporate Defendants BDI, JLI and BPI such that any individuality and separateness between
8 defendant Shareholders and Corporate Defendants BDI, JLI and BPI have ceased, and Corporate
9 Defendants BDI, JLI and BPI is the alter ego of Defendant Shareholders as follows:

10 (a) Plaintiff alleges that Corporate Defendants BDI, JLI and BPI is, and at all times herein
11 mentioned was, a mere shell and sham without capital, assets, stock of stockholders, Said
12 Corporate Defendants BDI, JLI and BPI was conceived, intended, and used by Defendant
13 Shareholders as a device to avoid individual liability and for the purpose of substituting a
14 financially insolvent corporation in the place of Defendant Shareholders. At no time after
15 Corporate Defendants BDI, JLI and BPI became incorporated was any stock authorized
16 to be issued or issued nor has any permit for issuance of stock been applied for with the
17 Commissioner of Corporations.

18 (b) Plaintiff alleges that Corporate Defendants BDI, JLI and BPI is, and at all time herein
19 mentioned was, so inadequately capitalized that, compared with the business to be done
20 by Corporation Defendant and the risks of loss attendant thereto, its capitalization was
21 illusory and trifling.

22 (c) Plaintiff alleges that Corporate Defendants BDI, JLI and BPI is, and at all times herein
23 mentioned was, the alter ego of Defendant Shareholders and there exists, and at times
24 herein mentioned has existed, a unity of ownership between Defendants such that any
25 separateness has ceased to exist in that Defendant Shareholders used assets of Corporate
26 Defendants BDI, JLI and BPI to be transferred to them without adequate consideration,
27 and withdraw funds from Corporate Defendants BDI, JLI and BPI and bank accounts for
28 their personal use.

- 1 (d) Plaintiff alleges that Corporate Defendants BDI, JLI and BPI is, and at all times
2 mentioned herein was, a mere shell, instrumentality and conduit through which
3 Defendant Shareholders carried on their business in the name of Corporate Defendants
4 BDI, JLI and BPI exactly as they conducted it previous incorporation exercising
5 complete control and dominance of such business to such an extent that any individuality
6 or separateness of Corporate Defendants BDI, JLI and BPI and Defendant Shareholders
7 does not now, and at any time herein mentioned did not, exist.
- 8 (e) Plaintiff alleges that Corporate Defendants BDI, JLI and BPI is, and at all times herein
9 mentioned was, controlled, dominated, and operated by Defendant Shareholders as their
10 individual business and alter ego, in that the activities and business Corporate Defendants
11 BDI, JLI and BPI were carried out without holding of Directors or Shareholders
12 meetings, no records of minutes of any corporate proceedings were maintained, and
13 Defendant Shareholders entered into personal transactions with Corporate Defendants
14 BDI, JLI and BPI without the approval of other directors or shareholder.
- 15 (f) Plaintiff alleges that adherence to the fiction of separate existence of Corporate
16 Defendants BDI, JLI and BPI as an entity distinct from Defendant Shareholders would
17 permit an abuse of the corporate privilege and would sanction fraud in that Defendant
18 Shareholders caused funds to be withdrawn from Corporate Defendants BDI, JLI and BPI
19 and distributed said funds to be withdrawn from Corporate Defendants BDI, JLI and BPI
20 and distributed said funds without any consideration to Corporate Defendants BDI, JLI
21 and BPI all for the purpose of avoiding and preventing attachment and execution by
22 creditors, including Plaintiff, thereby rendering Corporate Defendants BDI, JLI and BPI
23 insolvent and unable to meet its obligations.
- 24 (g) Plaintiff alleges that adherence to the fiction of separate existence of Corporate
25 Defendants BDI, JLI and BPI as an entity distinct from Defendant Shareholders would
26 permit abuse of the corporate privilege and produce an inequitable result in that
27 Defendant Shareholders represented to Plaintiff that said shareholders would be
28 responsible for corporate obligations and the transaction complained of herein was

1 entered under the belief that Defendant Shareholders were, in reality, the true parties
2 obligated.

3 (h) Plaintiff alleges that adherence to the fiction of separate existence of Corporate
4 Defendants BDI, JLI and BPI as an entity distinct from Defendant Shareholders would
5 permit abuse of the corporate privilege and produce an inequitable result in that
6 Defendant Shareholders guaranteed certain of Corporate Defendants BDI, JLI and BPI
7 obligations thereby enabling Corporate Defendants BDI, JLI and BPI to return to active
8 business without adequate financing and without capital stock, which return to return
9 business invited the public general, and Plaintiff in particular, to deal with Corporate
10 Defendants BDI, JLI and BPI to Plaintiff's loss as herein pleaded.

11 12. As a result of the acts, and omissions complained of hereinabove, said Defendant
12 Shareholders are jointly and severally liable, for all relief sought herein against Corporate
13 Defendants BDI, JLI and BPI by Plaintiff.

14 **COMMON ALLEGATIONS TO ALL CAUSES OF ACTION**

15 13. BDI, JLA, BPI are California corporations operating as a restaurant business. Garage
16 Pizza is a business entity unknown but that is the trade name that is used for BDI, JLA and BPI.
17 BDI, JLA, BPI and Garage Pizza will be collectively referred to herein as ("Defendants").

18 **Defendants Do Not Pay Minimum Wages and Overtime Wages**

19 14. Mr. Munoz worked for BDI and JLA under the trade name Garage Pizza as a non-exempt
20 employee in its pizza restaurant since 2013. Mr. Munoz worked for BPI from late 2015 to early
21 2016 under the trade name Garage pizza. During Mr. Munoz's employment, he consistently
22 worked shifts above 8 hours each day and 40 hours each week. At times Mr. Munoz would work
23 two eight hour shifts each day and Defendants would require Mr. Munoz to use a separate time
24 card to record his working hours. Defendants would not pay Mr. Munoz overtime for these hours
25 he worked above 8 hours each day or 40 hours each week. Other employees at Defendants also
26 worked above 8 hours per day and 40 hours per week and were also not paid at the overtime
27 rates.

28 **Defendants Do Not Provide Meal Breaks and Rest Breaks**

1 15. Mr. Munoz's shifts would typically work 14-16 hour days and would not be provided
2 with any opportunity to take any meal breaks or rest periods. All other employees would also
3 work above 8 hours per day and not be provided with any opportunity to take any meal breaks or
4 rest periods. Defendants did not compensate Mr. Munoz for any of his missed meal breaks or rest
5 periods throughout his entire employment.

6 **Defendants Provide Inaccurate Wage Statements**

7 16. Throughout Mr. Munoz's employment, his paystubs did not accurately reflected his total
8 hours worked, net wages earned, gross wages earned, total deductions and actual applicable
9 wage rate all in violation of California Labor Code Section 226(a), specifically sections 1-2, 4-5,
10 and 9.

11 17. Mr. Munoz is informed and on that basis believes that all other similarly situated
12 employees of Defendants were under the same circumstances and conditions of employment as
13 him. Specifically, all other California non-exempt employee of Defendants were not provided
14 with rest periods or meal breaks. Furthermore, all other all other California a non-exempt
15 employee were not provided with accurate itemized wages statements and received paystubs that
16 did not reflect hourly rate, gross wages earned, net wages earned, total hours worked, all
17 deductions taken out and inclusive dates for each pay period. By virtue of not being compensated
18 for overtime, missed meal periods and rest breaks, Mr. Munoz and other similarly situated
19 employees were not paid their wages on a timely basis.

20 **Defendants Discriminated and Retaliated Against Plaintiff After He Suffered A Work**
21 **Related Injury and Served a PAGA Notice**

22 18. On or around August 2015 Mr. Munoz suffered a work-related injury.

23 19. Shortly after my injury, Mr. Munoz made a request to Defendants that I see a doctor. The
24 Defendants denied Mr. Munoz's request. After not being able to retrieve medical care to my
25 work-related injury, Mr. Munoz retained a workers compensation attorney.

26 20. Shortly after retaining a workers compensation attorney, Mr. Munoz filed a workers
27 compensation claim. Immediately upon filing a workers compensation claim, Defendants
28 drastically reduced Mr. Munoz's hours from six days a week to 1 day a week without

1 explanation. Mr. Munoz expressed his desire to work more hours but Defendants refused to give
2 him more hours to work as 1 day a week does not provide enough hours for him to be able to
3 work and sustain his household.

4 21. Defendants refused to discuss Mr. Mr. Munoz's working hours. Defendants refused to
5 interact with Mr. Munoz to discuss any form of accommodation. Although Mr. Munoz could
6 have worked more hours, Defendants reduced his working hours significantly to a point where
7 Mr. Munoz could not sustain a household. Defendants made it difficult for Mr. Munoz to
8 continue working by attempting to retaliate against him through a work hour reduction because of
9 his workers compensation claim and work injury.

10 22. As a result of Defendants retaliatory tactics in reducing Mr. Munoz's working hours, Mr.
11 Munoz was required to obtain a second job since Defendants refused to increase Mr. Munoz's
12 working hours.

13 **Fraudulent Transfer of Business and Continued Operations**

14 23. Shortly after receiving notice of its Labor Code violations and anticipated lawsuit, on or
15 around December 2015, JB sold the business to BPI in hopes of avoiding liability in connection
16 to the Labor Code violations he committed against Mr. Munoz and his employees at BDI and
17 JLA. JB sold this business in efforts to avoid paying a valid claim. JB also notified Mr. Munoz's
18 subsequent employer about Mr. Munoz's anticipated lawsuit against BDI and JLA.

19 24. Mr. Munoz believes and alleges that prior to this anticipated lawsuit, Jason Batten as sole
20 shareholder of and alter ego of BDI and JLA fraudulently transferred and unlawfully agreed and
21 conspired with BPI to conceal the true ownership of its assets with intent to defraud BDI and JLI
22 claimants and creditors. Further, Mr. Munoz believes and alleges that BPI is a continuation of the
23 business of BPI and JLI. Mr. Munoz believes that Jason Batten as sole shareholder and alter ego
24 of BDI and JLI, he fraudulently transferred assets to BPI and that BDI, JLI and BPI are on and
25 the same for the following reasons:

- 26 a. BPI uses the same address that was used by BDI and JLI.
- 27 b. BPI uses the same employees as BDI and JLI.
- 28 c. BPI uses the same website and telephone numbers as BDI and JLI.

1 d. BPI uses the same equipment, menus, recipes, as BDI and JLI.

2 e. Jason Batten as sole shareholder and alter ego of BDI and JLI sold to BPI in
3 December of 2015 a month or so after receiving notification via certified letter of
4 a anticipated lawsuit and possible investigation of its California Labor Code
5 violations.

6 25. For these reasons, Mr. Munoz is informed and believes that Jason Batten's transfer of
7 assets through BDI and JLI to BPI should be set aside because the transfer was made in violation
8 of the Uniform Fraudulent Transfer Act (UFTA). BPI was formed and the transfer from Jason
9 Batten, BDI and JLI occurred with the intent to hinder Mr. Munoz from collecting or pursuing a
10 claim against BDI and JLI.

11 26. Further, for these reasons, Mr. Munoz is informed and believes that BPI is liable for any
12 judgment entered against BDI and JLI based on the successor corporation liability doctrine. BPI
13 was formed as a continuation of BDI and JLI to avoid any liability in connection to this lawsuit
14 against BDI and JLI. As a result of JLI's, BDI's and BPI's actions, Mr. Munoz will suffer and
15 has suffered and continues to suffer damages.

16 **Mr. Munoz's Constructive Termination**

17 27. On or around February 7, 2016, Defendants terminated Mr. Munoz's employment by
18 telling him the day of February 7, 2016 was going to be his last day and taking his keys to the
19 restaurant away. Mr. Munoz was the only employee that was let go and he was let go very
20 shortly after sending his complaints to Defendants informing Defendants of its California Labor
21 Code violations.

22 28. Consequently, Mr. Munoz has suffered and continues to suffer damages in the form of
23 lost wages, and other employment benefits. Although diligently looking for work, Mr. Munoz
24 has been unable to secure employment. Mr. Munoz is struggling to meet his everyday expenses.
25 As a result of the financial losses and the loss of his employment, Mr. Munoz has suffered and
26 continues to suffer emotional stress, including but not limited to, frustration, loss of confidence,
27 nervousness, humiliation, paranoia and anxiety.

28 **Exhaustion of Administrative Remedies**

1 29. On or around October 22, 2015, Plaintiff served via certified mail, return receipt
2 requested, the LWDA and BDI with a Private Attorney General notifying BDI of its California
3 labor code violations. The LWDA did not respond to this letter.

4 30. On December 22, 2015, Plaintiff served via certified mail, return receipt requested, the
5 LWDA and BDI and JLA with a new Private Attorney General notifying BDI and JLA of its
6 California labor code violations. A true and correct copy is attached as Exhibit 1. The LWDA did
7 not respond to this letter.

8 31. On January 5, 2016 Plaintiff exhausted his administrative remedies by filing a claim with
9 the California Department of Fair Employment and Housing and received a Notice of Case
10 Closure and Right-to-Sue letter, copies of which are attached hereto as Exhibit 2.

11 32. On April 21, 2016, Plaintiff amended his California Department of Fair Employment and
12 Housing Complaint to add additional Defendant Bazaar Pizza Inc. and received a Notice of Case
13 Closure and Right-to-Sue letter, copies of which are attached hereto as Exhibit 3.

14 **FIRST CAUSE OF ACTION**

15 **(Claim for Failure to Provide and Maintain Accurate**
16 **Itemized Wage Statements and Maintain Records**

17 **(Labor Code §§ 226(a), 1174, and 1198 and IWC Wage Order 5, Section 7 "Records" by**
18 **Plaintiff on Behalf of Himself Against All Defendants)**

19 25. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
20 above and below by reference as though set forth in full in this cause of action.

21 26. Plaintiff brings this claim on behalf of himself.

22 27. Labor Code section 226(a) states in pertinent part "Every employer shall, semimonthly or
23 at the time of each payment of wages, furnish each of his or her employees, either as a
24 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
25 wages are paid by personal check or cash, an accurate itemized statement in writing showing";

26 (1) Gross wages earned;
27
28

- 1 (2) Total hours worked by the employee, except for any employee whose compensation is
2 solely based on a salary and who is exempt from payment of overtime under subdivision
3 (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
4 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
5 paid on a piece-rate basis;
6 (4) All deductions;
7 (5) Net wages earned;
8 (6) The inclusive dates of the period for which the employee is paid;
9 (7) The name of the employee and only the last four digits of his or her social security
10 number or an employee identification number other than a social security number;
11 (8) The name and address of the legal entity that is the employer;
12 (9) All applicable hourly rates in effect during the pay period and the corresponding number
13 of hours worked at each hourly rate by the employee. The deductions made from
14 payment of wages shall be recorded in ink or other indelible form, properly dated,
15 showing the month, day, and year, and a copy of the statement and the record of the
16 deductions shall be kept on file by the employer for at least three years at the place of
17 employment or at a central location within the State of California.

18 28. Labor Code section 1174 requires employers to maintain records containing the
19 information specified in Section 1174 including but not limited to employees' total hours worked
20 and when employees begin and end each work period.

21 29. Through Defendants's conduct during the applicable statutory period including, but not
22 limited to, the conduct alleged herein, including that alleged on information and belief,
23 Defendant knowingly and intentionally failed to provide accurate wage statements to Plaintiff,
24 including but not limited to as a result of its failure to disclose provide Plaintiff with accurate
25 gross and net wages earned and failed to maintain the records required by Section 1174 of the
26 Labor Code.

27 30. Labor Code section 1198 states "The maximum hours of work and the standard
28 conditions of labor fixed by the commission shall be the maximum hours of work and the

1 standard conditions of labor for employees. The employment of any employee for longer hours
2 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

3 31. The “Records” section of Wage Order 5 provides that an employer must provide and
4 maintain accurate wage statements to its employees and maintain records.

5 32. Through Defendants’ conduct during the applicable statutory period including, but not
6 limited to, the conduct alleged herein, including that alleged on information and belief,
7 Defendant failed to provide Plaintiff accurate itemized wage statements, and maintain records all
8 in violation of Labor Code sections 226(a) and 1198, specifically failed to adhere to Labor Code
9 226(a) Sections 1-2, 4-5 and 9. Specifically;

- 10 a. In violation of Labor Code 226 (a) 1 Defendant failed to include the required
11 accurate actual gross wages section on Plaintiff’s paystubs by virtue of excluding
12 hours worked and wages earned and failing to incorporate meal breaks and rest
13 periods that should have been paid and failing to insert proper overtime wages
14 earned on the paystub;
- 15 b. In violation of Labor Code 226 (a) 2 Defendant failed to include the accurate
16 actual hours worked on Plaintiff’s paystubs by virtue of excluding hours worked
17 and wages earned and failing to incorporate meal breaks and rest periods of hours
18 actually worked by Mr. Munoz and failing to insert proper overtime wages earned
19 on the paystub;
- 20 c. In violation of Labor Code 226 (a) 4 Defendant failed to assert the actual
21 deductions that should have been taken out by virtue of excluding hours worked
22 and wages earned and failing to incorporate meal breaks and rest periods that
23 should have been paid and failing to insert proper overtime wages earned on the
24 paystub;
- 25 d. In violation of Labor Code 226 (a) 5 Defendant failed to include the Plaintiff the
26 accurate actual net wages earned on Plaintiff’s pay stubs by virtue of excluding
27 hours worked and wages earned and failing to incorporate meal breaks and rest
28

1 periods that should have been paid and failing to insert proper overtime wages
2 earned on the paystub;

- 3 e. In violation of Labor Code 226 (a) 9 Defendant failed to include all applicable
4 hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate by the employee because Defendant excluded
6 hours worked and wages earned by automatically deducting meal break time from
7 their paystub while failing to provide an uninterrupted meal break and incorrectly
8 excluded hours worked for meal breaks and rest periods that should have been
9 paid and failing to insert proper overtime wages earned on the paystub.

10 33. At all material times, Defendants were Plaintiff's employer and/or persons acting on
11 behalf of Defendant within the meaning of Labor Code section 558, who violated or caused to be
12 violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating
13 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
14 subject to penalties for each underpaid employee as set forth in Labor Code section 558
15 including the payment of the underpaid wages to affected employees.

16 34. Plaintiff suffered injury as a result of Defendants knowing and intentional failure to
17 provide him with accurate wage and hour statements required by law, which injury shall exceed
18 the jurisdictional minimums of the superior court. The exact amount of the applicable penalties is
19 an amount to be shown according to proof at trial and within the jurisdictional limits of the Court
20 but no less than \$4,000.00.

21 **SECOND CAUSE OF ACTION**

22 **(PAGA Claim for Failure to Provide and Maintain Accurate**

23 **Itemized Wage Statements and Maintain Records**

24 **(Labor Code §§ 226(a), 1174, and 1198 and IWC Wage Order 5, Section 7 "Records" by**

25 **Plaintiff on Behalf of the California Labor Commissioner Against All Defendants and**

26 **DOES 1-50)**

27 35. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
28 above and below by reference as though set forth in full in this cause of action.

1 36. Plaintiff brings this claim on behalf of the California Labor Commissioner seeking
2 penalties for violations committed against all Aggrieved Employees.

3 37. Pursuant to Labor Code section 2699, any provision of the Labor Code that already
4 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
5 divisions, commissions, boards, agencies or employees for violation of the code or does not
6 provide for a civil penalty may be recovered through a civil action brought by an aggrieved
7 employee on behalf of himself or herself and other current or former employees pursuant to the
8 procedures set forth in Labor Code section 2699.3.

9 38. Plaintiff is an "Aggrieved Employee" because Plaintiff was employed by the alleged
10 violators and had one or more of the alleged violations committed against Plaintiff, and therefore
11 is properly suited to represent the interests of Aggrieved Employees.

12 39. Plaintiff and Aggrieved Employees are/were employees of Defendant under the laws of
13 the State of California within the meaning of the Labor Code and Wage Order.

14 40. Labor Code section 226(a) states in pertinent part "Every employer shall, semimonthly or
15 at the time of each payment of wages, furnish each of his or her employees, either as a
16 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
17 wages are paid by personal check or cash, an accurate itemized statement in writing showing";

18 (1) Gross wages earned;

19 (2) Total hours worked by the employee, except for any employee whose compensation
20 is solely based on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
22 Commission;

23 (3) The number of piece-rate units earned and any applicable piece rate if the employee is
24 paid on a piece-rate basis;

25 (4) All deductions;

26 (5) Net wages earned;

27 (6) The inclusive dates of the period for which the employee is paid;

1 (7) The name of the employee and only the last four digits of his or her social security
2 number or an employee identification number other than a social security number;

3 (8) The name and address of the legal entity that is the employer;

4 (9) All applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee. The deductions made
6 from payment of wages shall be recorded in ink or other indelible form, properly
7 dated, showing the month, day, and year, and a copy of the statement and the record
8 of the deductions shall be kept on file by the employer for at least three years at the
9 place of employment or at a central location within the State of California.

10 41. Labor Code section 1174 requires employers to maintain records containing the
11 information specified in Section 1174 including but not limited to employees' total hours worked
12 and when employees begin and end each work period.

13 42. Through Defendant's conduct during the applicable statutory period including, but not
14 limited to, the conduct alleged herein, including that alleged on information and belief,
15 Defendants knowingly and intentionally failed to provide accurate wage statements to Aggrieved
16 Employees, including but not limited to as a result of its failure to disclose the applicable hourly
17 rate to Aggrieved Employees, and failed to maintain the records required by Section 1174 of the
18 Labor Code.

19 43. Labor Code section 1198 states "The maximum hours of work and the standard
20 conditions of labor fixed by the commission shall be the maximum hours of work and the
21 standard conditions of labor for employees. The employment of any employee for longer hours
22 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

23 44. The "Records" section of Wage Order 5 provides that an employer must provide and
24 maintain accurate wage statements to its employees and maintain records.

25 45. Through Defendant's conduct during the applicable statutory period including, but not
26 limited to, the conduct alleged herein, including that alleged on information and belief,
27 Defendant failed to provide Plaintiff and Aggrieved Employees and maintain, accurate itemized
28

1 wage statements, and maintain records all in violation of Labor Code sections 226(a) and 1198,
2 specifically failed to adhere to Labor Code 226(a) Sections 1-2, 4-5 and 9. Specifically;

- 3 a. In violation of Labor Code 226 (a) 1 Defendant failed to include the required
4 accurate actual gross wages section on Plaintiff's and Aggrieved Employees'
5 paystubs by virtue of excluding hours worked and wages earned and failing to
6 incorporate meal breaks and rest periods that should have been paid and failing to
7 insert proper overtime wages earned on the paystubs;
- 8 b. In violation of Labor Code 226 (a) 2 Defendant failed to include the accurate
9 actual hours worked on Plaintiff's and Aggrieved Employees' paystubs by virtue
10 of excluding hours worked and wages earned and failing to incorporate meal
11 breaks and rest periods of hours actually worked by Plaintiff and Aggrieved
12 Employees and failing to insert proper overtime wages earned on the paystubs;
- 13 c. In violation of Labor Code 226 (a) 4 Defendant failed to assert the actual
14 deductions that should have been taken out by virtue of excluding hours worked
15 and wages earned and not including the accurate gross and net wages earned by
16 the Plaintiff and Aggrieved Employees' and failing to incorporate meal breaks
17 and rest periods that should have been paid failing to insert proper overtime
18 wages earned on the paystubs;
- 19 d. In violation of Labor Code 226 (a) 5 Defendant failed to include the Plaintiff the
20 accurate actual net wages earned by virtue of excluding hours worked and wages
21 earned and not including the accurate gross and net wages earned by the Plaintiff
22 and Aggrieved Employees' and failing to incorporate meal breaks and rest periods
23 that should have been paid and failing to insert proper overtime wages earned on
24 the paystub;
- 25 e. In violation of Labor Code 226 (a) 9 Defendant failed to include all applicable
26 hourly rates in effect during the pay period and the corresponding number of
27 hours worked at each hourly rate by the Aggrieved Employees' because
28 Defendant excluded hours worked and wages earned by automatically deducting

1 meal break time from their paystub while failing to provide an uninterrupted meal
2 break and incorrectly excluded hours worked for meal breaks and rest periods that
3 should have been paid and failing to insert proper overtime wages earned on the
4 paystub.

5 46. Labor Code section 226(a) does not have a specific civil penalty for violations of the
6 statute.

7 47. For all provisions of the Labor Code that do not have a civil penalty, under Labor Code
8 section 2699(f), there is an established civil penalty for a violation of the provisions as follows:
9 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
10 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
11 violation in which the Defendant violated the Labor Code Section 226 (a).

12 48. Additionally, 226(a) permits a civil recovery pursuant to Labor Code section 226.3.
13 Plaintiff and other Aggrieved Employees seek civil penalties permitted by section 226.3 on
14 behalf of the Labor Commissioner for violations of section 226(a), which is as follows: two
15 hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand
16 dollars (\$1,000) per employee for each violation in a subsequent violation. The exact amount of
17 the applicable penalties is an amount to be shown according to proof at trial and within the
18 jurisdictional limits of the Court.

19 49. Plaintiff, for himself and on behalf of all Aggrieved Employees, seeks both penalties
20 permitted for violations of section 226(a) and, in the alternative, either recovery permitted by the
21 court. The exact amount of the applicable penalties is an amount to be shown according to proof
22 at trial and within the jurisdictional limits of the Court but no less than \$350,000.00 based upon
23 50 aggrieved employees during the relevant time period.

24 50. For bringing this action, Plaintiff also seeks attorney's fees and costs to the extent
25 permitted by Labor Code section 2699(g).

26 **THIRD CAUSE OF ACTION**

1 **(PAGA Claim for Failure to Maintain Records Labor Code §§ 1174, 1198 and IWC Wage**
2 **Order 5, Section 7 “Records” by Plaintiff on Behalf of the California Labor Commissioner**
3 **Against All Defendants and DOES 1-50)**

4 51. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
5 above and below by reference as though set forth in full in this cause of action.

6 52. Plaintiff brings this claim on behalf of the California Labor Commissioner seeking
7 penalties for violations committed against all Aggrieved Employees.

8 53. Pursuant to Labor Code section 2699, an aggrieved employee may recover penalties of
9 Labor Code violations through a civil action brought by an aggrieved employee on behalf of
10 himself or himself and other current or former employees pursuant to procedures set forth in
11 Labor Code section 2699 et seq.

12 54. Plaintiff is an “Aggrieved Employee” because Plaintiff was employed by the Defendant
13 and violated one or more of the Labor Code sections described under section 2699 et seq. against
14 Plaintiff, and therefore has standing to bring this action for himself and all other Aggrieved
15 Employees.

16 55. Under Labor Code section 1198, employers must comply with hours of work and
17 conditions of labor required by the IWC Wage Order. IWC Wage Order 5, Section 7 titled
18 “Records” sets forth the accurate information with respect to each employee that each employer
19 must keep.

20 56. Plaintiff and Aggrieved Employees are non-exempt employees of Defendants within the
21 meaning of the Labor Code and Wage Order.

22 57. Labor Code section 1198 states “The maximum hours of work and the standard
23 conditions of labor fixed by the commission shall be the maximum hours of work and the
24 standard conditions of labor for employees. The employment of any employee for longer hours
25 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

26 58. The “Records” section of Wage Order 5, section 7 provides as a standard of condition of
27 labor that accurate records be maintained by the employer including but not limited to the total
28 hours worked in the payroll period and applicable rates of pay.

1 59. Through Defendant's conduct during the applicable statutory period including, but not
2 limited to, the conduct alleged herein, including that alleged on information and belief,
3 Defendants failed to maintain records containing the information required including but not
4 limited to time records showing work periods worked by Plaintiff and Aggrieved Employees as
5 set forth in paragraphs 9 through 14 in violation of Wage Order 5 Section 7(A)(3)-(5) and (C).
6 Specifically;

- 7 a. In violation of Wage Order 5, Section 7 (A)(3), Defendants failed to keep time
8 records showing when the Plaintiff and Aggrieved Employees took meal periods
9 by not recording the meal periods;
- 10 b. In violation of Wage Order 5, Section 7 (A)(4), Defendant failed to accurately
11 insert Plaintiff's and Aggrieved Employees' total wages paid on each pay stub
12 because Defendants failed to incorporate the Plaintiff's applicable meal breaks
13 premium wages and rest periods premium wages and overtime wages into the
14 paychecks;
- 15 c. In violation of Wage Order 5, Section 7 (A)(5), Defendant failed to accurately
16 insert Plaintiff's and Aggrieved Employees' total hours worked on each paystub
17 by virtue of excluding hours worked and wages earned and failing to incorporate
18 meal breaks and rest periods that should have been paid; and
- 19 d. In violation of Wage Order 5, Section 7 (C), Defendant failed to maintain the
20 required employment records of the Plaintiff and Aggrieved Employees' due to
21 the fact that Defendant does not accurately record its employees' applicable meal
22 breaks and rest periods at all and excludes hours worked and wages earned and
23 does not incorporate meal breaks and rest periods and overtime hours into the
24 paystub records where that time should have been paid.

25 60. Since the Defendant did not keep accurate records for all employees, the Plaintiff seeks
26 the appropriate civil penalties on behalf of himself and all other aggrieved employees. Labor
27 Code section 1198 does not include a civil penalty within the statute. Therefore, under 2699(f),
28 the civil penalty for violations of Labor Code 1198 is the default penalty of one hundred dollars

1 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
2 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

3 61. In addition to any other civil penalties provided by law, Plaintiff seeks penalties pursuant
4 to Wage Order 5, Section 20 which entitles the Plaintiff to fifty dollars (\$50.00) for the initial
5 violation for each aggrieved employee for each pay period which the employer violated Wage
6 Order 5, Section 7(A)(5) and one-hundred dollars (\$100.00) for all subsequent violations for
7 each aggrieved employee for each pay period which the employer violated Wage Order 5,
8 Section 7(A)(5).

9 62. The exact amount of the applicable penalties is an amount to be shown according to proof
10 at trial and within the jurisdictional limits of the Court but no less than \$250,000.00 based upon
11 50 aggrieved employees during the relevant time period.

12 63. For bringing this action, Plaintiff also seeks attorney's fees and costs to the extent
13 permitted by Labor Code section 2699(g).

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17 **FOURTH CAUSE OF ACTION**

18 **(Claim for Failure to Provide Meal Breaks – Lab. Code 226.7 and Wage Order 5, Section** 19 **11 by Plaintiff Against All Defendants and DOES 1-50)**

20 64. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
21 above and below by reference as though set forth in full in this cause of action.

22 65. Plaintiff brings this claim on behalf of himself.

23 66. Defendants were required to authorize and permit employees to take uninterrupted meal
24 breaks pursuant to Industrial Welfare Commission Wage Order 5-2001, Section 11(A).

25 Defendants failed to do so by not allowing such uninterrupted meal breaks. Plaintiff is entitled to
26 civil penalties as a consequence of this failure.

27 67. Defendants were required to pay the employees one (1) hour of pay at their regular rate of
28 compensation for each workday that the legally compliant meal breaks is not provided, pursuant

1 to Industrial Welfare Commission Wage Order 5-2001, section 11(B). It failed to do so. Plaintiff
2 is entitled to civil penalties and owed wages as a consequence of this failure.

3 68. As a direct result of Defendants violations alleged herein, Plaintiff has suffered and
4 continues to suffer substantial losses related to the use and enjoyment of such wages, including
5 lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to
6 fully perform its obligation under state law, all to their respective damage in amounts according
7 to proof at trial and within the jurisdictional limitations of this Court.

8 69. Plaintiff is entitled to recover the penalties set forth in Wage Order 5 and the Labor Code.

9 70. As a result of the violations alleged herein, Plaintiff seeks all civil penalties and wages
10 available pursuant to the Labor Code and Wage Order 5, and an award of reasonable attorney's
11 fees and costs. The exact amount of the applicable penalties is an amount to be shown according
12 to proof at trial and within the jurisdictional limits of the Court but no less than \$10,000.00.

13 **FIFTH CAUSE OF ACTION**

14 **(PAGA Claim for Failure to Provide Meal Breaks – Lab. Code 226.7 and Wage Order 5,** 15 **Section 11 by Plaintiff on Behalf of the California Labor Commissioner Against All** 16 **Defendants and DOES 1-50)**

17 71. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
18 above and below by reference as though set forth in full in this cause of action.

19 72. Plaintiff brings this claim on behalf of the California Labor Commissioner seeking
20 penalties for violations committed against all Aggrieved Employees.

21 73. Defendants were required to authorize and permit employees to take uninterrupted meal
22 breaks pursuant to Industrial Welfare Commission Wage Order 5-2001, Section 11 (A).
23 Defendants failed to do so by not allowing such uninterrupted meal breaks. Plaintiff is entitled to
24 civil penalties on behalf of all Aggrieved Employees as a consequence of this failure.

25 74. Defendants were required to pay the employees one (1) hour of pay at their regular rate of
26 compensation for each workday that the legally compliant meal breaks is not provided, pursuant
27 to Industrial Welfare Commission Wage Order 5-2001, section 11 (B). Defendants failed to do
28 so. Plaintiff is entitled to civil penalties on behalf of all Aggrieved Employees as a consequence

1 of this failure. Plaintiff on behalf of Aggrieved Employees is entitled to recover the penalties set
2 forth in Wage Order 5.

3 75. Plaintiff is informed and on that basis believes that all other non-exempt California
4 employees of Defendants were under the same circumstances and conditions of employment as
5 him. Specifically, the Defendant's failure to provide and compensate its employees for missed
6 meal breaks.

7 76. Labor Code section 226.7 does not have a specific civil penalty for violations of the
8 statute.

9 77. For all provisions of the Labor Code that do not have a civil penalty, under Labor Code
10 section 2699(f), there is an established civil penalty for a violation of the provisions as follows:
11 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
12 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
13 violation in which the Defendant violated the Labor Code Section 226.7. The exact amount of
14 the applicable penalties is an amount to be shown according to proof at trial and within the
15 jurisdictional limits of the Court but no less than \$250,000.00 based upon 50 aggrieved
16 employees during the relevant time period.

17 78. For bringing this action, Plaintiff also seeks attorney's fees and costs to the extent
18 permitted by Labor Code section 2699(g).

19 SIXTH CAUSE OF ACTION

20 **(Claim for Failure to Provide Rest Periods – Lab. Code 226.7 and Wage Order 5, Section**
21 **12 by Plaintiff Against All Defendants and DOES 1-50)**

22 79. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
23 above and below by reference as though set forth in full in this cause of action.

24 80. Plaintiff brings this claim on behalf of himself.

25 81. Defendants were required to authorize and permit employees to take uninterrupted rest
26 periods pursuant to Industrial Welfare Commission Wage Order 5-2001, Section 12(A). It failed
27 to do so by not allowing such uninterrupted rest periods. Plaintiff is entitled to civil penalties as a
28 consequence of this failure.

1 82. Defendants were required to pay the employees one (1) hour of pay at their regular rate of
2 compensation for each workday that the legally compliant rest period is not provided, pursuant to
3 Industrial Welfare Commission Wage Order 5-2001, section 12(B). Defendants failed to do so
4 by not allowing such interrupted rest periods. Plaintiff is entitled to civil penalties as a
5 consequence of this failure.

6 83. Plaintiff is entitled to recover the penalties set forth in Wage Order 5, Section 12 (B) and
7 Labor Code.

8 84. As a direct result of Defendants violations alleged herein, Plaintiff has suffered and
9 continues to suffer substantial losses related to the use and enjoyment of such wages, including
10 lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to
11 fully perform its obligation under state law, all to their respective damage in amounts according
12 to proof at trial and within the jurisdictional limitations of this Court. The exact amount of the
13 applicable penalties is an amount to be shown according to proof at trial and within the
14 jurisdictional limits of the Court but no less than \$10,000.00.

15 85. As a result of the violations alleged herein, Plaintiff seeks all civil penalties available
16 pursuant to the Labor Code and Wage Order 5, and an award of reasonable attorney's fees and
17 costs.

18 **SEVENTH CAUSE OF ACTION**

19 **(PAGA Claim for Failure to Provide Rest Periods – Lab. Code 226.7 and Wage Order 5,**
20 **Section 12 by Plaintiff on Behalf of the California Labor Commissioner Against Defendant,**
21 **and DOES 1-50)**

22 86. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
23 above and below by reference as though set forth in full in this cause of action.

24 87. Plaintiff brings this claim on behalf of the California Labor Commissioner seeking
25 penalties for violations committed against all Aggrieved Employees.

26 88. Defendants were required to authorize and permit employees to take uninterrupted rest
27 periods pursuant to Industrial Welfare Commission Wage Order 5-2001, Section 12(A).
28

1 Defendants failed to do so by not allowing such uninterrupted rest periods. Plaintiff and
2 Aggrieved Employees are entitled to civil penalties as a consequence of this failure.

3 89. Defendants were required to pay the employees one (1) hour of pay at their regular rate of
4 compensation for each workday that the legally compliant rest period is not provided, pursuant to
5 Industrial Welfare Commission Wage Order 5-2001, section 12(B). Defendants failed to do so.
6 Plaintiff and Aggrieved Employees are entitled to civil penalties as a consequence of this failure.

7 90. Plaintiff on behalf of Aggrieved Employees is entitled to recover the penalties set forth in
8 Wage Order 5, Section 12 (B) and Labor Code.

9 91. Plaintiff is informed and on that basis believes that all other Similarly Situated
10 Employees of Defendant were under the same circumstances and conditions of employment as
11 him. Specifically, the Defendant's failure to provide and compensate its employees for missed
12 rest periods.

13 92. Labor Code section 226.7 does not have a specific civil penalty for violations of the
14 statute.

15 93. For all provisions of the Labor Code that do not have a civil penalty, under Labor Code
16 section 2699(f), there is an established civil penalty for a violation of the provisions as follows:
17 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
18 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
19 violation in which the Defendant violated the Labor Code Section 226.7. The exact amount of
20 the applicable penalties is an amount to be shown according to proof at trial and within the
21 jurisdictional limits of the Court but no less than \$250,000.00 based upon 50 aggrieved
22 employees during the relevant time period.

23 94. For bringing this action, Plaintiff also seeks attorney's fees and costs to the extent
24 permitted by Labor Code section 2699(g).

25 **EIGHTH CAUSE OF ACTION**

26 **(Claim For Failure to Pay Overtime Wage in Violation of Labor Code §§ 510, 1194, 1198**
27 **and IWC Wage Order 5, § 3 by Plaintiff on Behalf of Himself Against All Defendants and**
28 **DOES 1-50 inclusive)**

1 95. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
2 above and below by reference as though set forth in full in this cause of action.

3 96. Throughout Plaintiff's employment, he worked above 8 hour working shifts and 40 hours
4 per week. Defendant did not compensate Plaintiff for any overtime for hours worked above 8
5 hours in a day and 40 hours per week.

6 97. Plaintiff is entitled to overtime compensation according to proof at the time of trial under
7 Labor Code sections 510, 1194 subdivision (a), 1198 enforcing Wage Order 5. Defendant's
8 failure to pay Plaintiff as required by the applicable wage order, violates the provision of Labor
9 Code section 1194, subdivision (a) and is therefore unlawful. Defendant also violated Labor
10 Code section 510.

11 98. Plaintiff is entitled to earnings for all hours worked, including overtime and double
12 overtime. Plaintiff is also entitled to recover the statutory civil fines pursuant to Labor Code
13 section 2699 and statutory attorney fees pursuant to Labor Code section 1194, subdivision (a).
14 The exact amount of the applicable damages is an amount to be shown according to proof at trial
15 and within the jurisdictional limits of the Court but no less than \$25,000.00.

16 **NINTH CAUSE OF ACTION**

17 **(PAGA Claim For Failure to Pay Overtime Wage in Violation of Labor Code §§ 510, 1194,**
18 **1198 and IWC Wage Order 5, § 3 by Plaintiff on Behalf of Himself and All Aggrieved**
19 **Employees Against Defendant and DOES 1-50 inclusive)**

20 99. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
21 above and below by reference as though set forth in full in this cause of action.

22 100. Plaintiff brings this claim on behalf of the California Labor Commissioner seeking
23 penalties for violations committed against all Aggrieved Employees.

24 101. Pursuant to Labor Code section 2699, an aggrieved employee may recover penalties of
25 Labor Code violations through a civil action brought by an aggrieved employee on behalf of
26 himself or herself and other current or former employees pursuant to procedures set forth in
27 Labor Code section 2699 et seq.
28