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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JUAN CHAVEZ-DUENAS, individually and on
behalf of all others similarly situated,

PLAINTIFF,

v.

ANTHONY, INC.; and DOES 1 through 50,
inclusive,

DEFENDANTS.

CASE NO.: 22STCV35211

*Assigned for all purposes to the Hon. William F.
Highberger; Dept. 10*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1197, 1197.1, 1198,
1199)
- (2) FAILURE TO PAY OVERTIME WAGES
(LABOR CODE § 510 AND 1198)
- (3) FAILURE TO PROVIDE MEAL PERIODS
AND/OR PAY MEAL PERIOD PREMIUMS
(LABOR CODE § 226.7, 512)
- (4) FAILURE TO AUTHORIZE AND PERMIT
REST BREAKS AND/OR PAY REST BREAK
PREMIUMS (LABOR CODE § 226.7)
- (5) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE § 226)
- (6) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204)
- (7) FAILURE TO TIMELY PAY FINAL
WAGES (LABOR CODE §§ 201-203)
- (8) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204)
- (9) PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698 – 2699.5)

DEMAND FOR JURY TRIAL

1 Plaintiff Juan Chavez-Duenas (“Plaintiff”), individually, and on behalf of others similarly
2 situated (hereinafter “Class Members”), and as a private attorney general, based upon facts that either
3 have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
4 further investigation and discovery, complains and hereby alleges as follows:

5 **OVERVIEW OF CLAIMS**

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

16 2. Plaintiff’s First through Eighth Causes of Action are brought as a class action on behalf
17 of himself and similarly situated current and former employees of Defendants (hereinafter collectively
18 referred to as the “Class” or “Class Members,” as defined more fully in Paragraph 10, below) pursuant
19 to California Code of Civil Procedure Section 382. The monetary damages and restitution sought by
20 Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according
21 to proof at trial.

22 3. The “Class Period” is designated as the period from four years prior to the filing of this
23 action through the trial date. Defendants’ violations of California’s wage-hour laws and unfair
24 competition laws, as described more fully below, occurred throughout the Class Period.

25 4. Plaintiff’s Ninth Cause of Action is brought as a representative action on behalf of
26 himself and other current and former non-exempt employees of Defendants in the State of California at
27 any time within the period beginning one (1) year prior to the date of Plaintiff’s PAGA letter to the
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1 LWDA and ending at the time this action settles or proceeds to final judgment (hereinafter collectively
2 referred to as the “Aggrieved Employees”) pursuant to California Labor Code Sections 2698, *et seq.*
3 Plaintiff is an aggrieved employee against whom one or more of the alleged violations occurred. The
4 civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will
5 be established according to proof at trial.

6 **VENUE**

7 5. Venue is proper in this county under Section 395.5 of the California Code of Civil
8 Procedure. Many of the putative Class Members were employed by Defendants and/or performed work
9 for Defendants during the Class Period in Los Angeles County. Defendants are a manufacturer of glass
10 refrigerator and freezer doors in the County of Los Angeles. Many of the acts alleged herein, including
11 Defendants’ failure to pay minimum wages, failure to pay overtime compensation, failure to provide
12 compliant meal periods, failure to provide compliant rest breaks, failure to issue complete and accurate
13 itemized wage statements, failure to pay wages on a timely basis, and failure to timely pay final wages
14 occurred in Los Angeles County. Venue is therefore proper in Los Angeles County.

15 **JURISDICTION**

16 6. Defendants are within the jurisdiction of this Court. Defendants are manufacturers of
17 glass refrigerator and freezer doors and conduct business in California. Thus, Defendants have obtained
18 the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims arising under
19 federal law. Rather, Plaintiff brings causes of action based solely on, and arising from, California law.
20 The claims of the class are also based solely on California law described herein. Therefore, jurisdiction
21 is appropriate in the Superior Court of California, County of Los Angeles.

22 **THE PARTIES**

23 7. Plaintiff is a California resident who worked for Defendants as a warehouse employee
24 during the relevant time period, from February 2015 to August 2022. At all relevant times, Plaintiff was
25 employed by Defendants as an hourly, full-time, non-exempt employee.

26 8. From at least four years from the filing of this Complaint through the present, and on-
27 going, Defendants’ employees, at various times throughout the Class Period, including Plaintiff during
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1 his employment, were not paid all minimum wages owed, including for time spent in pre-shift COVID
2 temperature checks; were not provided overtime compensation; were not provided compliant meal
3 periods nor paid meal period premiums for missed meal periods; were not provided compliant rest
4 breaks nor paid rest break premiums for missed rest breaks; were not provided accurate and/or complete
5 itemized wage statements; and did not receive timely wages.

6 9. Defendant ANTHONY, INC. is a California corporation doing business in Sylmar,
7 California. Defendants are manufacturers of glass refrigerator and freezer doors doing business in
8 California.

9 10. Plaintiff seeks to represent a Class defined as:

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

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

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

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

22 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
23 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
24 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
25 attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer
26 and/or joint employer of Plaintiff and the Class Members. Plaintiff is informed and believes, and thereon
27 alleges, that each and every one of the acts and omissions alleged herein were performed by, and/or
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1 attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and
2 control of, each of the other Defendants, and that said acts and failures to act were within the course and
3 scope of said agency, employment, and/or direction and control.

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

9 14. Defendants employed Plaintiff, and Class Members as non-exempt, hourly-paid
10 employees in California at various times during the Class Period. On information and belief, Defendants
11 employed approximately 500 hourly-paid employees in California during the Class Period.

12 **FACTUAL ALLEGATIONS**

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

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

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

27 18. Here, Defendants required Plaintiff, Class Members, and the Aggrieved Employees to
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1 regularly perform work-off-the-clock for which they did not receive any compensation. Specifically, as
2 part of the Class Members' employment, Defendants required Plaintiff, Class Members, and the
3 Aggrieved Employees to undergo COVID-19 temperature checks before the start of their shift, and
4 before they "clocked-in." Specifically, from around March 2020 through approximately June 2022,
5 Plaintiff, Class Members, and the Aggrieved Employees were required to form a line outside and inside
6 of Defendants' warehouse and were given a mandatory temperature check by Defendants' management
7 team, while off the clock, before being allowed to clock in for their shifts. Although Defendants
8 maintained a common policy and practice of requiring Plaintiff, Class Members, and the Aggrieved
9 Employees to stand/wait in line pre-shift for COVID-19 temperature checks during the Class Period,
10 Defendants failed to compensate Plaintiff, Class Members, and the Aggrieved Employees for such time.

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

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

25 21. In *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1056 (2020) (citing *Morillion*, 22 Cal.4th at
26 587) the California Supreme Court reaffirmed its holding in *Morillion* that "[t]he level of the employer's
27 control over its employees, rather than the mere fact that the employer requires the employees' activity,
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1 is determinative” concerning whether an activity is compensable under the “hours worked” control
2 clause. In *Frlekin*, the California Supreme Court found that time employees spent undergoing bag
3 searches at the end of their shifts was compensable. The Court reasoned its decision by analyzing factors
4 in determining whether an employer has exerted compensable control over employees:

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

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

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

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

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

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

1 A: Yes. Employers must pay workers for all hours worked, including time
2 that a worker is under the control of the employer. Employers that require
3 their workers to complete a medical check in order to begin a shift, even if
4 it is recommended under public health orders, must compensate workers
5 for that time worked.

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

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

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

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

1 27. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by
2 an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages,
3 and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one
4 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
5 underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty
6 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
7 regardless of whether the initial violation is intentionally committed. As set forth above, Defendants
8 failed to compensate Plaintiff, Class Members, and the Aggrieved Employees for all hours worked.
9 Accordingly, to the extent permitted by law Plaintiff, Class Members, and the Aggrieved Employees are
10 entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these same
11 factual allegations, Plaintiff, the Class Members, and Aggrieved Employees are entitled to penalties
12 under Labor Code §§ 203, 1197.1, and 1199.

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

18 29. Labor Code Section 510 requires employers to compensate employees for all hours
19 worked. Moreover, employees must be paid one and a half times their regular rate of pay for hours
20 worked in excess of 8 hours a day or 40 hours per week.

21 30. IWC Wage Order 1-2001, § 3 states in relevant part, “Such employees shall not be
22 employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee
23 receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over
24 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight
25 (8) hours in any workday or more than six (6) days in any workweek is permissible provided the
26 employee is compensated for such overtime at not less than: (a) One and one-half (11/2) times the
27 employee’s regular rate of pay for all hours worked in excess of eight (8) hours —3 up to and including
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1 twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th)
2 consecutive day of work in a workweek.”

3 31. Labor Code Section 512 provides in relevant part, “An employer shall not employ an
4 employee for a work period of more than five hours per day without providing the employee with a meal
5 period of not less than 30 minutes, except that if the total work period per day of the employee is no
6 more than six hours, the meal period may be waived by mutual consent of both the employer and
7 employee. An employer shall not employ an employee for a work period of more than 10 hours per day
8 without providing the employee with a second meal period of not less than 30 minutes, except that if the
9 total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent
10 of the employer and the employee only if the first meal period was not waived.”

11 32. IWC Wage Order 1-2001, § 11 states, “(A) No employer shall employ any person for a
12 work period of more than five (5) hours without a meal period of not less than 30 minutes, except that
13 when a work period of not more than six (6) hours will complete the day’s work the meal period may
14 be waived by mutual consent of the employer and the employee. . . . (B) An employer may not employ
15 an employee for a work period of more than ten (10) hours per day without providing the employee with
16 a second meal period of not less than 30 minutes, except that if the total hours worked is no more than
17 12 hours, the second meal period may be waived by mutual consent of the employer and the employee
18 only if the first meal period was not waived.”

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

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

1 35. Here, on information and belief, Plaintiff, Class Members, and the Aggrieved Employees
2 were not provided timely, compliant, off-duty meal periods. Plaintiff is informed and believes, and based
3 thereon alleges, that during the relevant period, Defendants (1) did not have legally-compliant policies
4 regarding the provision and timing of meal periods and/or systematically disregarded any purported
5 meal period policies; (2) Defendants' management affecting hourly non-exempt employees failed to
6 implement and enforce legally compliant meal period policies and practices; (3) Defendants failed to
7 adequately inform and train employees regarding their right to take timely, uninterrupted, and duty-free
8 meal periods; (4) Defendants failed to adequately inform and train employees about their right to
9 premium wages for non-compliant meal periods; and (5) Defendants did not have any policy or practice
10 pertaining to meal period violations.

11 36. Plaintiff is further is informed and believes, and based thereon alleges, that Defendants
12 further violated Labor Code Sections 226.7 and 512 and IWC Wage Order 1-2001, § 11 by failing to
13 compensate Plaintiff, Class Members, and the Aggrieved Employees who were not provided with a meal
14 period one (1) additional hour of compensation at each employee's regular rate of pay for each workday
15 that a compliant meal period was not provided.

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

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

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

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

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

15 40. As to Plaintiff, the Wage Statement Subclass (as defined in Paragraph 8), Defendants
16 also failed to provide accurate itemized wage statements in accordance with Labor Code § 226, subd.
17 (a).

18 41. Defendants knowingly and intentionally failed to Plaintiff, Class Members, and the
19 Aggrieved Employees and all Wage Statement Subclass Members all minimum wages associated with
20 COVID-19 temperature checks, and failed to pay meal and rest break premiums owed for missed
21 statutory meal periods and rest breaks. Accordingly, all wage statements contained inaccurate
22 information as to hours worked and wages earned (since time spent on pre-shift COVID temperature
23 checks were never included). Moreover, Plaintiff, Class Members, and the Aggrieved Employees and
24 all Wage Statement Subclass Members also suffered legal “injury” for purposes of Labor Code Section
25 226(e) insofar as they were unable to readily and easily determine the information required to be set
26 forth by Section 226(a). Specifically, Plaintiff, Class Members, and the Aggrieved Employees, and the
27 Wage Statement Subclass Members were unable to determine the actual and accurate total hours worked
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1 by the employees, the gross wages earned, the net wages earned, since time spent on mandatory COVID-
2 19 temperature checks, and waiting in line was always done off the clock and pre-shift.

3 42. Plaintiff, Class Members, the Aggrieved Employees, and the Wage Statement Subclass
4 will prevail on their claim under Labor Code § 226(a) without having to show injury or willfulness as
5 Defendants willfully failed to provide accurate itemized wage statements.

6 43. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
7 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
8 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
9 violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction
10 statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above,
11 Defendants failed to provide Plaintiff, Class Members, Aggrieved Employees, and the Wage Statement
12 Subclass Members with accurate itemized wage statements. Accordingly, Plaintiff, Class Members, the
13 Aggrieved Employees, and the Wage Statement Subclass Members may recover Labor Code § 226.3
14 penalties Defendants’ violations of Labor Code § 226(a) in addition to the normal penalties provided for
15 in Section 226.

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

21 45. Due to Defendants’ failure to pay Plaintiff, Class Members, and the Aggrieved
22 Employees, on a timely and bi-monthly basis for all applicable minimum wages, Defendants failed to
23 timely pay Plaintiff, Class Members, and the Aggrieved Employees wages owed within seven (7) days
24 of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent
25 basis.

26 46. During the relevant time period, the employment of Plaintiff, Class Members, and the
27 Aggrieved Employees with Defendants ended, i.e., was terminated by quitting or discharge. Defendants
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1 intentionally and willfully failed to pay Plaintiff, Class Members, and the Aggrieved Employees who
2 are no longer employed by Defendants all of their wages, earned and unpaid, including but not limited
3 to premium wages, within seventy-two (72) hours of their leaving Defendants' employ.

4 **CLASS ACTION ALLEGATIONS**

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

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

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

27 b. Commonality: There are questions of law and fact common to Plaintiff and the
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1 Class that predominate over any questions affecting only individual members of the Class. These
2 common questions of law and fact include, without limitation:

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

6 ii. Whether Defendants violated Labor Code Sections 510 and 1198 and IWC Wage
7 Order 1-2001 Section 3 by failing to pay overtime compensation to Plaintiff and the members of the
8 Class who worked more than eight (8) hours per day and/or more than forty (40) hours per week;

9 iii. Whether Defendants violated Labor Code Sections 226.7 and 512 and IWC Wage
10 Order 1-2001 Section 11 by failing to provide compliant meal periods during the Class Period;

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

13 v. Whether Defendants violated Labor Code Section 226.7 and IWC Wage Order 1-
14 2001 section 12 by failing to provide compliant rest breaks during the Class Period;

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

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

19 viii. Whether Defendants violated Sections 204 of the Labor Code by failing to pay
20 member of the Class all wages due on a timely basis;

21 ix. Whether Defendants violates Sections 201-203 of the Labor Code by failing to
22 timely pay final wages;

23 x. Whether Defendants engaged in an unfair practice and violated Section 17200 of
24 the California Business and Professions Code by failing to pay Plaintiff and the members of the Class
25 all minimum wages owed, by failing to provide compliant meal periods; and by failing to provide
26 compliant rest breaks during the Class Period;

27 xi. Whether Plaintiff and the Class are entitled to restitution under Business and
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1 Professions Code § 17200;

2 xii. The proper formula(s) for calculating damages, interest, and restitution owed to
3 Plaintiff and the Class Members; and

4 xiii. The nature and extent of class-wide damages.

5 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff
6 and the Class Members sustained injuries and damages, and were deprived of property rightly belonging
7 to them, arising out of and caused by Defendants' common course of conduct in violation of law as
8 alleged herein, in similar ways and for the same types of unpaid wages.

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

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

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

7 50. The actionable period for this cause of action is three years prior to the filing of the
8 Complaint, through the present, and on-going until the violations are corrected, or the Class is certified.

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

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

22 53. As alleged herein, Defendants required Plaintiff and the Class to regularly perform work-
23 off-the-clock before their shifts for which they did not receive any compensation. Specifically, as part
24 of the Class Members’ employment, Defendants required Plaintiff and all Class Members to undergo
25 COVID-19 temperature checks before the start of their shift, and before they “clocked in.” Specifically,
26 from around March 2020 and continuing to June 2022, Plaintiff and the Class have been required to
27 form a line outside and inside Defendants’ premises and were given a temperature check by Defendants’
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1 management team, while off the clock, before being allowed to clock in for their shifts. Only after this
2 mandatory task was completed did Plaintiff and the Class finally clock in for their shifts. Although
3 Defendants maintained a common policy and practice of requiring Plaintiff and the Class to stand/wait
4 in line pre-shift for COVID-19 temperature checks during the Class Period, Defendants failed to
5 compensate Plaintiff and the Class for such time.

6 54. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
7 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including
8 interest thereon, reasonable attorney's fees, and costs of suit.

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

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

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

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1 twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th)
2 consecutive day of work in a workweek.”

3 63. During the relevant time period, Plaintiff and the Class Members sometimes worked in
4 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week. Defendants maintained
5 a common policy and practice of requiring Plaintiff and the Class Members to undergo pre-shift COVID-
6 19 temperature checks. Defendants exercised compensable control over the Class Members who
7 underwent COVID-19 temperature checks, and stood in line to do so, and owe wages to the Class
8 Members for this time.

9 64. During the relevant time period, Defendants intentionally and willfully failed to pay
10 overtime wages to Plaintiff and other Class Members.

11 65. As a further result of Defendants’ failure to pay all overtime wages, Defendants failed to
12 timely pay Plaintiff and the Class Members all wages owed at the time of their separations from
13 employment.

14 66. Pursuant to California Labor Code Section 1194, Plaintiff and the other Class Members
15 are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys’ fees.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

18 **AND/OR PAY MEAL PERIOD PREMIUMS FOR NONCOMPLIANT MEAL PERIODS**

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

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

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

23 68. The actionable period for this cause of action is three years prior to the filing of the
24 Complaint, through the present, and on-going until the violations are corrected, or the Class is certified.

25 69. Labor Code Section 512 provides in relevant part, “An employer shall not employ an
26 employee for a work period of more than five hours per day without providing the employee with a meal
27 period of not less than 30 minutes, except that if the total work period per day of the employee is no
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1 more than six hours, the meal period may be waived by mutual consent of both the employer and
2 employee. An employer shall not employ an employee for a work period of more than 10 hours per day
3 without providing the employee with a second meal period of not less than 30 minutes, except that if the
4 total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent
5 of the employer and the employee only if the first meal period was not waived.”

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

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

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

23 73. Here, on information and belief, Plaintiff and the Class Members were not provided
24 timely, compliant, off-duty meal periods. Plaintiff is informed and believes, and based thereon alleges,
25 that during the relevant period, Defendants (1) did not have legally-compliant policies regarding the
26 provision and timing of meal periods and/or systematically disregarded any purported meal period
27 policies; (2) Defendants’ management affecting hourly non-exempt employees failed to implement and
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1 enforce legally compliant meal period policies and practices; (3) Defendants failed to adequately inform
2 and train Class Members regarding their right to take timely, uninterrupted, and duty-free meal periods;
3 (4) Defendants failed to adequately inform and train Class Members about their right to premium wages
4 for non-compliant meal periods; and (5) Defendants did not have any policy or practice pertaining to
5 meal period violations.

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

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**

13 **AND/OR PAY REST PERIOD PREMIUMS FOR NONCOMPLIANT REST PERIODS**

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

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

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

18 76. The actionable period for this cause of action is three years prior to the filing of the
19 Complaint, through the present, and on-going until the violations are corrected, or the Class is certified.

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE AND COMPLETE WAGE STATEMENTS

Labor Code § 226(a) and (e)

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

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

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

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

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

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

12 84. As alleged herein, Defendants knowingly and intentionally failed to pay Plaintiff and all
13 Wage Statement Subclass Members all minimum wages associated with COVID-19 temperature checks
14 and meal period and rest break premiums for noncompliant meal periods and rest breaks. Accordingly,
15 all wage statements contained inaccurate information as to hours worked and wages earned (since time
16 spent on pre-shift COVID temperature checks and premiums were not included). Plaintiff and all Wage
17 Statement Subclass Members also suffered legal “injury” for purposes of Labor Code Section 226(e)
18 insofar as they were unable to readily and easily determine the information required to be set forth by
19 Section 226(a). Specifically, Plaintiff and the Wage Statement Subclass Members were unable to
20 determine the actual and accurate total hours worked by the employees, the gross wages earned, the net
21 wages earned, since time spent on COVID-19 temperature checks, and waiting in line was always done
22 off the clock and pre-shift.

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

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

9 **SIXTH CAUSE OF ACTION**

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

11 **Labor Code §§ 204**

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 **Labor Code §§ 201-203**

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

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

7 91. At all relevant times herein set forth, California Labor Code Sections 201 and 202
8 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
9 discharge are due and payable immediately, and if an employee quits his or her employment, his or her
10 wages shall become due and payable not later seventy-two (72) hours thereafter, unless the employee
11 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is
12 entitled to his or her wages at the time of quitting.

13 92. During the relevant time period, the employment of Plaintiff and many other Class
14 Members with Defendants ended, *i.e.*, was terminated by quitting or discharge. Defendants
15 intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer employed
16 by Defendants all of their wages, earned and unpaid, including but not limited to premium wages,
17 within seventy-two (72) hours of their leaving Defendants' employ.

18 93. Defendants' failure to pay Plaintiff and other Class Members who are no longer
19 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
20 Defendants' employ, is in violation of California Labor Code Sections 201 and 202.

21 94. California Labor Code Section 203 provides that if an employer willfully fails to pay
22 wages owed, in accordance with Sections 201 and 202, then the wages of the employee shall continue
23 as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but
24 the wages shall not continue for more than thirty (30) days.

25 95. Plaintiff and other Class Members who are no longer employed by Defendants are
26 entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to
27 a thirty (30) day maximum pursuant to California Labor Code Section 203.

1 **EIGHT CAUSE OF ACTION**

2 **UNFAIR COMPETITION LAW VIOLATIONS**

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

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

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

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

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

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

21 100. As a direct and proximate result of Defendants’ unlawful business practices, Plaintiff and
22 the Class Members have suffered economic injuries. Defendants have profited from its unlawful, unfair,
23 and/or fraudulent acts and practices.

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

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

8 103. Defendants engaged in unfair competition in violation of Sections 17200 et seq. of the
9 California Business & Professions Code by violating Section 1194 of the California Labor Code.

10 104. Defendants' course of conduct, act and practice in violation of the California laws
11 mentioned above constitute independent violations of Sections 17200 et seq. of the California Business
12 and Professions Code.

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

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

21 **NINTH CAUSE OF ACTION**

22 **(VIOLATION OF CALIFORNIA LABOR CODE § 2699, ET SEQ.)**

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

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

26 108. Plaintiff brings his Ninth Cause of Action as a representative action on behalf of himself
27 and all other Aggrieved Employees in the capacity as a private attorney general pursuant to the Private
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1 Attorneys General Act of 2004, California Labor Code Section 2698, *et seq.* (“PAGA”).

2 109. PAGA specifically provides for a private right of action to recover civil penalties for
3 violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision
4 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
5 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
6 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
7 brought by an aggrieved employee on behalf of himself or herself and other current or former
8 employees pursuant to the procedures specified in Section 2699.3.” Labor Code § 2699(a).

9 110. Plaintiff was employed by Defendants and the Labor Code violations alleged above
10 were committed against him during his time of employment. Plaintiff is therefore, an “aggrieved
11 employee” under PAGA.

12 111. As set forth in detail above, during all times relevant to this Action, Defendants have
13 routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes by:

- 14 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
15 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 16 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime compensation
17 in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 18 c. Failing to provide legally compliant meal periods to Plaintiff and the Aggrieved
19 Employees and failing to pay Plaintiff and the Aggrieved Employees an additional hour
20 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512.
- 21 d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take
22 duty-free rest periods and failing to pay Plaintiff and the Aggrieved Employees an
23 additional hour of premium pay for rest period violations in violation of Labor Code §§
24 226.7 and 512.
- 25 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end of their
26 employment in violation of Labor Code § 203.
- 27 f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during
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1 employment in violation of Labor Code § 204.

2 g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
3 itemized wage statements in violation of Labor Code § 226.

4 h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees’
5 work periods, meal periods, total daily hours, hours per pay period, total wages and
6 compensation, and applicable pay rates in violation of Labor Code § 1174(d) and the
7 applicable IWC Wage Order.

8 112. California Labor Code Sections 2699 and 2699.5, Plaintiff, individually and on behalf
9 of himself and the Aggrieved Employees and the State of California, requests and is entitled to recover
10 penalties against Defendants for the Labor Code violations described above, including but not limited
11 to penalties under California Code of Regulations Title 8 section 11050, penalties under California
12 Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5, and 1197.1, and any and all
13 additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact
14 amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

15 113. Pursuant to Labor Code § 2699.3, on October 28, 2022, Plaintiff, through his counsel of
16 record, gave written notice by online filing with the Labor and Workforce Development Agency
17 (“LWDA”) and by certified mail to the Defendants, of the specific provisions of the Labor Code and
18 IWC Wage Orders that Defendants have violated, including the facts and theories to support the
19 violations, and of Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid
20 the filing fee required under Labor Code § 2699.3. To date, the LWDA has not indicated that it intends
21 to investigate the violations discussed in the PAGA notice. Accordingly, Plaintiff has or soon will have
22 fulfilled all administrative prerequisites to the pursuit of his PAGA claim on behalf himself and other
23 Aggrieved Employees pursuant to Labor Code § 2699.3.

24 114. Plaintiff was compelled to retain the services of counsel to file this court action to protect
25 his interests and the Aggrieved Employees, and to assess and collect the civil penalties owed by
26 Defendants. Plaintiff therefore seeks an award of reasonable attorneys’ fees and costs pursuant to Labor
27 Code § 2699(g)(1), and any other applicable statute.

1 **JURY DEMAND**

2 107. Plaintiff demands trial by jury of his and the Class Members' claims against Defendants,
3 except for UCL claims which will be tried to the Court.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff, individually and on behalf of all other members of the general public
6 similarly situated, and as a private attorney general, except for UCL claims which will be tried to the
7 Court, prays for relief and judgment against Defendants, jointly and severally, as follows:

8 1. An Order that this action may proceed and be maintained as a class action;

9 2. On the First Cause of Action:

10 a. A declaratory judgment that Defendants have violated California Labor Code
11 Sections 1194 and 1197 by failing to pay Plaintiff and Class Members all minimum wages due;

12 b. An award to Plaintiff and the other members of the Class in the amount of their
13 unpaid minimum wages owed, plus interest and/or liquidated damages under 1194.2 during the Class
14 Period, as well as attorneys' fees under Labor Code Section 1194;

15 3. On the Second Cause of Action:

16 a. A declaratory judgment that Defendants have violated California Labor Code §
17 510 and 1198, and IWC Wage Order 1-2001 Section 3 by failing to pay all overtime wages to Plaintiff
18 and Class Members;

19 b. An award to Plaintiff and the other members of the Class in the amount of their
20 unpaid overtime wages owed during the Class Period under Labor Code Section 510;

21 4. On the Third Cause of Action:

22 a. A declaratory judgment that Defendants have violated California Labor Code §
23 226.7 and 512, and IWC Wage Order 1-2001 Section 11 by failing to provide compliant meal periods
24 to Plaintiff and Class Members;

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

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- 1 5. On the Fourth Cause of Action:
- 2 a. A declaratory judgment that Defendants have violated California Labor Code §
- 3 226.7 and IWC Wage Order 1-2001 Section 12 by failing to provide compliant rest periods to Plaintiff
- 4 and Class Members;
- 5 b. An award to Plaintiff and the other members of the Class in the amount of their
- 6 unpaid rest period premiums owed during the Class Period under Labor Code Section 226.7;
- 7 6. On the Fifth Cause of Action:
- 8 a. A declaratory judgment that Defendants violated California Labor Code § 226 by
- 9 failing to issue compliant wage statements to Plaintiff, Class Members, and the Wage Statement
- 10 Subclass members;
- 11 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each
- 12 initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay period
- 13 in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as
- 14 well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).
- 15 7. On the Sixth Cause of Action:
- 16 a. A declaratory judgment that Defendants violated California Labor Code §§ 204
- 17 and 210;
- 18 b. Pursuant to Labor Code § 204, an award to Plaintiff and the Late Payment
- 19 Subclass for penalties pursuant to Labor Code § 204.
- 20 8. On the Seventh Cause of Action:
- 21 a. A declaratory judgment that Defendants willfully violated California Labor Code
- 22 §§ 201- 203 by failing to pay all compensation owed at the time of termination of the employment of
- 23 Plaintiff and other Class Members who are no longer employed by Defendants;
- 24 b. Pursuant to Labor Code §§ 201-203, an award to Plaintiff and the Late Payment
- 25 Subclass for penalties pursuant to Labor Code §§ 201-203.
- 26 9. On the Eight Cause of Action:
- 27 a. That the Court find and declare that Defendants have violated the UCL and
- 28

1 committed unfair and unlawful business practices by failing to pay minimum wages, meal period
2 premiums, and rest period premiums;

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

6 10. On the Ninth Cause of Action:

7 a. For the imposition of civil penalties pursuant to California Labor Code §§ 210, 558,
8 226, 226.3, 1174.5, 1197.1, and 2699, subdivisions (a) and (f); and all other penalties allowed by the
9 California Labor Code and/or other applicable statutes;

10 b. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
11 Code Section 2699, subdivision (g) and any other applicable provisions providing for attorneys' fees
12 and costs; and

13 c. For such other relief as the Court deems just and proper.

14 DATED: January 3, 2023

15 Respectfully submitted,

16 **PROXY LAW FIRM LLP**

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20 _____
21 Rana Nader
22 Attorneys for Plaintiff JUAN CHAVEZ-
23 DUENAS, individually and on behalf of
24 others similarly situated
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff Juan Chavez-Duenas, individually and on behalf of others similarly situated hereby
3 demands a jury trial with respect to all issues triable of right by jury.

4
5 DATED: January 3, 2023

6 Respectfully submitted,

7 **PROXY LAW FIRM LLP**

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10 _____
11 Rana Nader
12 Attorneys for Plaintiff JUAN CHAVEZ-
13 DUENAS, individually and on behalf of
14 others similarly situated

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On January 3, 2023, I served the following document(s): FIRST AMENDED CLASS ACTION COMPLAINT on the following person or persons:

Yvonne Arvantis Fossati, Esq.
Hazel U. Poei, Esq.
Gabriel Mendoza, Esq.
Kimberly Ferguson
Jackson Lewis P.C.
200 Spectrum Center Drive.,
Suite 500
Irvine, CA 92618
Email: yvonne.fossati@jacksonlewis.com
Email: hazel.poei@jacksonlewis.com
Email: gabriel.mendoza@jacksonlewis.com
Email: kimberly.ferguson@jacksonlewis.com

☒ **BY ELECTRONIC TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax number(s) listed above. No error was reported by the fax machine that I used.

☐ **BY OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in the attached Proof of Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY FAX TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax number(s) listed above. No error was reported by the fax machine that I used.

☐ **BY MESSENGER SERVICE.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in the attached Proof of Service List and providing them to a professional messenger service for service.

☐ **BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in the attached Proof of Service List:

☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepared.

1 ☐ placed the envelope for collection and mailing, following our ordinary business practices.
2 I am readily familiar with this business's practice for collecting and processing correspondence for
3 mailing. On the same day that correspondence is placed for collection and mailing, it is deposited
4 in the ordinary course of business with the United States Postal Service, in a sealed envelope with
postage fully prepaid.

5 I am a resident of and employed in the county where the mailing occurred. The envelope or
6 package was placed in the mail at Los Angeles, California.

7 ☐ **BY PERSONAL SERVICE.** I personally delivered the documents to the persons at the addresses
8 listed in the attached Proof of Service List. (1) For a party represented by an attorney, delivery was made
9 (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or
10 package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge
11 of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by
leaving them in a conspicuous place in the office between the hours of nine in the morning and five in
the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's
residence with some person not younger than 18 years of age between the hours of eight in the morning
and six in the evening.

12 I declare under penalty of perjury under the laws of the State of California, that the foregoing is true
and correct.

13 Executed on January 3, 2023 at Los Angeles, California.
14

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16 

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18 _____
Rana Nader