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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF FRESNO**

12 JORGE ALCALA, an individual, and JOSE
ALVARADO aka JOSE ALBERTO
13 ALVARADO RIVERA, individually, and on
behalf of themselves, the State of California, as
14 private attorneys general, and on behalf of all
others similarly situated,

15
16 Plaintiffs,

17 v.

18 CERTIFIED MEAT PRODUCTS, INC., a
19 California Corporation; and DOES 1 TO 50,
inclusive,

20
21 Defendants.

FILED

OCT 11 2024

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

BY _____ DEPUTY

Case Number: 22CECG03628

**Second Amended Class and Representative
Action Complaint For:**

1. Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802];
6. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
7. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
9. Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") for Violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the California Labor Code.

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1 Plaintiffs Jorge Alcala and Jose Alvarado ("Plaintiffs"), on behalf of themselves, all other
2 similarly situated employees within the State of California, and the State of California, as private
3 attorneys general, complain and allege of defendants Certified Meat Products, Inc. and Does 1 to 50
4 (collectively, "Defendants"), and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this action against Defendants Certified Meat Products, Inc., and Does
7 1 through 50 (collectively referred to as "Defendants") for California Labor Code violations and unfair
8 business practices stemming from Defendants' failure to pay minimum wages, failure to pay overtime
9 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to maintain
10 accurate records of hours worked and meal periods, failure to timely pay all wages to terminated
11 employees, failure to indemnify necessary business expenses, and failure to furnish accurate wage
12 statements.

13 2. Plaintiffs bring the First through Eighth Causes of Action individually and as a class
14 action on behalf of themselves and certain current and former employees of Defendants (hereinafter
15 collectively referred to as the "Class" or "Class Members" and defined more fully below). The Class
16 consists of Plaintiffs and all other persons who have been employed by any Defendants in California
17 as an hourly-paid, non-exempt employee during the statute of limitations period applicable to the
18 claims pleaded here.

19 3. Plaintiffs bring the Ninth Cause of Action as a representative action under the California
20 Private Attorney General Act ("PAGA") to recover civil penalties that are owed to Plaintiffs, the State
21 of California, and past and present employees of Defendants (hereinafter referred to as the "Aggrieved
22 Employees").

23 4. Defendants own/owned and operate/operated an industry, business, and establishment
24 within the State of California, including Fresno County. As such, and based upon all the facts and
25 circumstances incident to Defendants' business in California, Defendants are subject to the California
26 Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California
27 Business & Professions Code.

1 5. Plaintiffs are informed and believe and thereon allege that the California Industrial
2 Welfare Commission ("IWC") Wage Orders applicable to the facts of this case are IWC Wage Orders
3 1-2001, 8-2001, and/or 13-2001 (the "Applicable Wage Orders") and possibly others that may be
4 applicable. (Cal. Code of Regs., tit. 8, §§ 11010, 11080, 11130.) Plaintiffs reserve the right to amend
5 or modify the definition of "Applicable Wage Orders" with greater specificity or add additional IWC
6 Wage Orders if additional applicable wage orders are discovered in litigation.

7 6. Despite these requirements, throughout the statutory period Defendants maintained a
8 systematic, company-wide policy and practice of:

- 9 (a) Failing to pay employees for all hours worked, including all minimum wages,
10 and overtime wages in compliance with the California Labor Code and IWC
11 Wage Orders;
- 12 (b) Failing to provide employees with timely and duty-free meal periods in
13 compliance with the California Labor Code and IWC Wage Orders, failing to
14 maintain accurate records of all meal periods taken or missed, and failing to pay
15 an additional hour's pay for each workday a meal period violation occurred;
- 16 (c) Failing to authorize and permit employees to take timely and duty-free rest
17 periods in compliance with the California Labor Code and IWC Wage Orders,
18 and failing to pay an additional hour's pay for each workday a rest period
19 violation occurred;
- 20 (d) Failing to indemnify employees for necessary business expenses incurred;
- 21 (e) Willfully failing to pay employees all minimum wages, overtime wages, meal
22 period premium wages, and rest period premium wages due within the time
23 period specified by California law when employment terminates; and
- 24 (f) Failing to maintain accurate records of the hours that employees worked.
- 25 (g) Failing to provide employees with accurate, itemized wage statements
26 containing all the information required by the California Labor Code and IWC
27 Wage Orders.

1 7. On information and belief, Defendants, and each of them were on actual and
2 constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful
3 policies. Defendants' violations, as alleged above, during all relevant times herein were willful and
4 deliberate.

5 8. At all relevant times, Defendants were and are legally responsible for all of the unlawful
6 conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs
7 as the employer of Plaintiffs and the Class. Further, Defendants are responsible for each of the unlawful
8 acts or omissions complained of herein under the doctrine of "respondeat superior".

9 **JURISDICTION & VENUE**

10 9. This Court has subject matter jurisdiction over all causes of action asserted herein
11 pursuant to Article VI, § 10, of the California Constitution and Code of Civil Procedure § 410.10
12 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000,
13 and because each cause of action asserted arises under the laws of the State of California or is subject
14 to adjudication in the courts of the State of California.

15 10. This Court has personal jurisdiction over Defendants because Defendants have caused
16 injuries in the County of Fresno and the State of California through their acts, and by their violation of
17 the California Labor Code and California state common law. Defendants transact millions of dollars of
18 business within the State of California. Defendants own, maintain offices, transact business, have an
19 agent or agents within the County of Fresno, and/or otherwise are found within the County of Fresno,
20 and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 11. Venue as to Defendants is proper in this judicial district, pursuant to § 395 of the Code
22 of Civil Procedure. Defendants operate within California and do business within Fresno County,
23 California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all of Defendants'
24 employees identified above within Fresno County and surrounding counties where Defendants may
25 remotely operate.

1 **THE PARTIES**

2 **PLAINTIFFS**

3 12. At all relevant times, Plaintiff Jorge Alcala, who is over the age of 18, was and currently
4 is a citizen of California residing in the State of California. Defendants employed Plaintiff Jorge Alcala
5 as a non-exempt hourly employee in the County of Fresno.

6 13. At all relevant times, Plaintiff Jose Alvarado (aka Jose Alberto Alvarado Rivera) is a
7 California resident that worked for Defendants in the County of Fresno, State of California as a non-
8 exempt hourly employee during the statutory period.

9 14. The Class Members and Aggrieved Employees, at all times pertinent hereto, are or were
10 employees of Defendants during the relevant statutory period.

11 **DEFENDANTS**

12 15. Plaintiffs are informed and believe, and based upon that information and belief alleges,
13 that Defendant Certified Meat Products, Inc. is:

- 14 (a) A California corporation with its principal place of business in Fresno,
15 California.
- 16 (b) A business entity conducting business in numerous counties throughout the State
17 of California, including in Fresno County; and
- 18 (c) The former employer of Plaintiffs, and the current and/or former employer of
19 the putative Class. Defendants suffered and permitted Plaintiffs and the Class to
20 work, and/or controlled their wages, hours, or working conditions.

21 16. Plaintiffs do not currently know the true names or capacities of the persons or entities
22 sued herein as Does 1-50, inclusive, and therefore sues said Defendants by such fictitious names. Each
23 of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiffs
24 and the Class as alleged herein. Plaintiffs will amend this complaint to set forth the true names and
25 capacities of these Defendants when they have been ascertained, together with appropriate charging
26 allegations, as may be necessary.

1 17. At all times mentioned herein, the Defendants named as Does 1-50, inclusive, and each
2 of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured
3 a significant number of the Plaintiffs and the Class in the State of California.

4 18. Plaintiffs are informed and believe and thereon alleges that at all relevant times each
5 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and the other
6 employees described in the class definitions below, and exercised control over their wages, hours, and
7 working conditions. Plaintiffs are informed and believe and thereon alleges that, at all relevant times,
8 each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
9 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest
10 of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a
11 joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so
12 as to be liable for their conduct with respect to the matters alleged below. Plaintiffs are informed and
13 believes and thereon alleges that each Defendant acted pursuant to and within the scope of the
14 relationships alleged above, that each Defendant knew or should have known about, and authorized,
15 ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

16 **ALLEGATIONS COMMON TO ALL CASUES OF ACTION**

17 19. Plaintiff Jorge Alcala was employed by Defendants within the statutory PAGA Period,
18 working as an hourly, non-exempt dumper for Defendants. Plaintiff Jose Alvarado was employed by
19 Defendants as an hourly, non-exempt meat cutter during the statutory Class Period. During the
20 statutory period, Defendants classified Plaintiffs as non-exempt from California's overtime
21 requirements, and paid Plaintiffs an hourly wage.

22 20. Throughout the statutory period, Defendants failed to pay Plaintiffs for all hours worked
23 (including minimum wages and overtime wages), failed to provide Plaintiffs with uninterrupted meal
24 periods, failed to authorize and permit Plaintiffs to take uninterrupted rest periods, failed to indemnify
25 Plaintiffs for necessary business expenses, failed to timely pay all final wages to Plaintiffs when
26 Defendants terminated Plaintiffs' employment, and failed to furnish accurate wage statements to
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1 Plaintiffs. As discussed below, Plaintiffs' experience working for Defendants was typical and
2 illustrative.

3 21. Throughout the statutory period, Defendants maintained a policy and practice of not
4 paying Plaintiffs and the Class for all hours worked, including all overtime wages. Throughout the
5 statutory period, Plaintiffs and the Class were required to work off the clock, and uncompensated. For
6 example, Plaintiffs and the Class were required to wait in line in order to clock into work, off the clock
7 and uncompensated. Plaintiffs and the Class were also required to wait in line in order to clock back
8 into work after meal breaks, not only cutting their meal breaks short, but also leading to off the clock
9 work which was uncompensated.

10 22. Throughout the statutory period, Defendants have wrongfully failed to provide Plaintiffs
11 and the Class with legally compliant meal periods. Defendants sometimes, but not always, required
12 Plaintiffs and the Class to work in excess of five consecutive hours a day without providing 30-minute,
13 continuous and uninterrupted, duty-free meal period for every five hours of work, or without
14 compensating Plaintiffs and the Class for meal periods that were not provided by the end of the fifth
15 hour of work or tenth hour of work. Defendants also did not adequately inform Plaintiffs and the Class
16 of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10
17 hours, by the end of the tenth hour of work. Defendants also failed to accurately record meal periods.
18 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiffs and the
19 Class in compliance with California law.

20 23. Throughout the statutory period, Defendants have wrongfully failed to authorize and
21 permit Plaintiffs and the Class to take timely and duty-free rest periods. Defendants sometimes, but
22 not always, required Plaintiffs and the Class to work in excess of four consecutive hours a day without
23 Defendants authorizing and permitting them to take a 10-minute, continuous and uninterrupted, rest
24 period for every four hours of work (or major fraction of four hours), or without compensating Plaintiffs
25 and the Class for rest periods that were not authorized or permitted. Defendants also did not adequately
26 inform Plaintiffs and the Class of their right to take a rest period. Moreover, Defendants did not have
27 adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Class, nor did
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1 Defendants have adequate policies or practices regarding the timing of rest periods. Defendants also
2 did not have adequate policies or practices to verify whether Plaintiffs and the Class were taking their
3 required rest periods. Further, Defendants did not maintain accurate records of employee work periods,
4 and therefore Defendants cannot demonstrate that Plaintiffs and the Class took rest periods during the
5 middle of each work period. Accordingly, Defendants' policy and practice was to not authorize and
6 permit Plaintiffs and the Class to take rest periods in compliance with California law.

7 24. Throughout the statutory period, Defendant wrongfully required Plaintiffs and the Class
8 to pay expenses that they incurred in direct discharge of their duties for Defendant without
9 reimbursement, which included the purchase of safety masks. Plaintiffs and the Class were also
10 required to pay for blade sharpening prior to the company providing a blade sharpener. Plaintiffs and
11 the Class were also required to use their own personal cellular telephones for work purposes on
12 occasion. Plaintiffs and the Class incurred these substantial expenses as a direct result of performing
13 their job duties for Defendant, and Defendant has failed to indemnify Plaintiffs and the Class for these
14 employment-related expenses.

15 25. Throughout the statutory period, Defendants willfully failed and refused to timely pay
16 Plaintiffs and the Class at the conclusion of their employment all wages for all minimum wages,
17 overtime wages, meal period premium wages, and rest period premium wages.

18 26. Throughout the statutory period, Defendants failed to furnish Plaintiffs and the Class
19 with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
20 wages earned (including correct hours worked, correct wages earned for hours worked, correct
21 overtime hours worked, correct wages for meal periods that were not provided in accordance with
22 California law, correct wages for rest periods that were not authorized and permitted to take in
23 accordance with California law, and Defendant's address). Further, the wage statements do not show
24 Defendant's address as required by California law, or sick leave balances as required by Labor Code
25 §246(i). As a result of these violations of California Labor Code § 226(a) and 246(i), the Plaintiffs and
26 the Class suffered injury because, among other things:
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- 1 (a) the violations led them to believe that they were not entitled to be paid minimum
2 wages, overtime wages, meal period premium wages, and rest period premium
3 wages to which they were entitled, even though they were entitled;
- 4 (b) the violations led them to believe that they had been paid the minimum,
5 overtime, meal period premium, and rest period premium wages, even though
6 they had not been;
- 7 (c) the violations led them to believe they were not entitled to be paid minimum,
8 overtime, meal period premium, and rest period premium wages at the correct
9 California rate even though they were;
- 10 (d) the violations led them to believe they had been paid minimum, overtime, meal
11 period premium, and rest period premium wages at the correct California rate
12 even though they had not been;
- 13 (e) the violations hindered them from determining the amounts of minimum,
14 overtime, meal period premium, and rest period premium owed to them;
- 15 (f) in connection with their employment before and during this action, and in
16 connection with prosecuting this action, the violations caused them to have to
17 perform mathematical computations to determine the amounts of wages owed to
18 them, computations they would not have to make if the wage statements
19 contained the required accurate information;
- 20 (g) by understating the wages truly due them, the violations caused them to lose
21 entitlement and/or accrual of the full amount of Social Security, disability,
22 unemployment, and other governmental benefits;
- 23 (h) the wage statements inaccurately understated the wages, hours, and wages rates
24 to which Plaintiffs and the Class were entitled, and Plaintiffs and the Class were
25 paid less than the wages and wage rates to which they were entitled.

26 Thus, Plaintiffs and the Class are owed the amounts provided for in California Labor Code §
27 226(e), including actual damages.
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CLASS ACTION ALLEGATIONS

27. Plaintiffs bring certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure § 382.

28. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

29. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending when notice to the Class is sent.

30. At all material times, Plaintiffs were members of the Class.

31. Plaintiffs undertake this concerted activity to improve the wages and working conditions of all Class Members.

32. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiffs at this time, however, the Class is estimated to be at least 100 individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.

(c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein.

1 Plaintiffs have no conflicts with or interests antagonistic to any Class Member.
2 Plaintiffs' attorneys, the proposed class counsel, are versed in the rules
3 governing class action discovery, certification, and settlement. Plaintiffs has
4 incurred, and throughout the duration of this action, will continue to incur costs
5 and attorneys' fees that have been, are, and will be necessarily expended for the
6 prosecution of this action for the substantial benefit of each class member.

7 (d) Superiority: A Class Action is superior to other available methods for the fair
8 and efficient adjudication of the controversy, including consideration of:

- 9 1) The interests of the members of the Class in individually controlling
10 the prosecution or defense of separate actions;
- 11 2) The extent and nature of any litigation concerning the controversy
12 already commenced by or against members of the Class;
- 13 3) The desirability or undesirability of concentrating the litigation of the
14 claims in the particular forum; and
- 15 4) The difficulties likely to be encountered in the management of a class
16 action.

17 (e) Public Policy Considerations: The public policy of the State of California is to
18 resolve the California Labor Code claims of many employees through a class
19 action. Indeed, current employees are often afraid to assert their rights out of
20 fear of direct or indirect retaliation. Former employees are also fearful of
21 bringing actions because they believe their former employers might damage
22 their future endeavors through negative references and/or other means. Class
23 actions provide the class members who are not named in the complaint with a
24 type of anonymity that allows for the vindication of their rights at the same time
25 as their privacy is protected.

1 33. There are common questions of law and fact as to the Class (and each subclass, if any)
2 that predominate over questions affecting only individual members, including without limitation,
3 whether, as alleged herein, Defendants have:

- 4 (a) Failed to pay Class Members for all hours worked, including minimum wages,
5 and overtime wages;
- 6 (b) Failed to provide meal periods and pay meal period premium wages to Class
7 Members;
- 8 (c) Failed to authorize and permit rest periods and pay rest period premium wages
9 to Class Members;
- 10 (d) Failed to promptly pay all wages due to Class Members upon their discharge or
11 resignation;
- 12 (e) Failed to maintain accurate records of all hours Class Members worked, and all
13 meal periods Class Members took or missed;
- 14 (f) Failed to reimburse Class Members for all necessary business expenses; and
- 15 (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result
16 of their illegal conduct as described above.

17 34. This Court should permit this action to be maintained as a class action pursuant to
18 California Code of Civil Procedure § 382 because:

- 19 (a) The questions of law and fact common to the Class predominate over any
20 question affecting only individual members;
- 21 (b) A class action is superior to any other available method for the fair and efficient
22 adjudication of the claims of the members of the Class;
- 23 (c) The members of the Class are so numerous that it is impractical to bring all
24 members of the class before the Court;
- 25 (d) Plaintiff, and the other members of the Class, will not be able to obtain effective
26 and economic legal redress unless the action is maintained as a class action;

- 1 (e) There is a community of interest in obtaining appropriate legal and equitable
2 relief for the statutory violations, and in obtaining adequate compensation for
3 the damages and injuries for which Defendants are responsible in an amount
4 sufficient to adequately compensate the members of the Class for the injuries
5 sustained;
- 6 (f) Without class certification, the prosecution of separate actions by individual
7 members of the class would create a risk of:
- 8 (a) Inconsistent or varying adjudications with respect to individual
9 members of the Class which would establish incompatible standards of
10 conduct for Defendants; and/or
- 11 (b) Adjudications with respect to the individual members which would, as
12 a practical matter, be dispositive of the interests of other members not parties
13 to the adjudications, or would substantially impair or impede their ability to
14 protect their interests, including but not limited to the potential for exhausting
15 the funds available from those parties who are, or may be, responsible
16 Defendants; and,
- 17 (g) Defendants have acted or refused to act on grounds generally applicable to the
18 Class, thereby making final injunctive relief appropriate with respect to the class
19 as a whole.

20 35. Plaintiffs contemplate the eventual issuance of notice to the proposed members of the
21 Class that would set forth the subject and nature of the instant action. The Defendants' own business
22 records may be utilized for assistance in the preparation and issuance of the contemplated notices. To
23 the extent that any further notices may be required, Plaintiffs would contemplate the use of additional
24 techniques and forms commonly used in class actions, such as published notice, e-mail notice, website
25 notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed
26 necessary and/or appropriate by the Court.

1 **FIRST CAUSE OF ACTION**

2 **(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)**

3 36. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
4 through 26 in this Second Amended Complaint.

5 37. "Hours worked" is the time during which an employee is subject to the control of an
6 employer, and includes all the time the employee is suffered or permitted to work, whether or not
7 required to do so.

8 38. Labor Code § 1197 requires employees to be paid at least the minimum wage fixed by
9 the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194
10 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the
11 unpaid balance of the full amount of this minimum wage." Likewise, the Applicable Wage Orders also
12 obligate employers to pay each employee minimum wages for all hours worked. (Cal. Code of Regs.,
13 tit. 8, §§ 11010, 11080, 11130.) Labor Code § 1198 makes unlawful the employment of an employee
14 under conditions that the IWC Wage Orders prohibit.

15 39. Defendants failed to fully conform their pay practices to the requirements of the law
16 during the relevant statutory periods. Plaintiffs and the Class were not compensated for all hours
17 worked including, but not limited to, all hours they were subject to the control of Defendants and/or
18 suffered or permitted to work under the California Labor Code and the Applicable Wage Orders.
19 Among other violations, Plaintiffs and the Class were subject to the control of Defendants while off-
20 the-clock and did not receive minimum wage for each hour worked.

21 40. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiffs
22 and the Class compensation for all hours they worked. By their failure to pay compensation for each
23 hour worked as alleged above, Defendants willfully violated the provisions of § 1194 of the California
24 Labor Code, and any additional applicable Wage Orders, which require such compensation to non-
25 exempt employees.

1 41. Labor Code § 1197.1 authorizes employees who are paid less than the minimum wage
2 fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
3 damages, as follows:

4 (1) “For any initial violation that is intentionally committed, one
5 hundred dollars (\$100) for each underpaid employee for each pay period
6 for which the employee is underpaid.”

7 (2) “For each subsequent violation for the same specific offense, two
8 hundred fifty dollars (\$250) for each underpaid employee for each pay
9 period for which the employee is underpaid regardless of whether the
10 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.

11 (a).)

12 42. As set forth above, Defendants failed to fully compensate the Plaintiffs and the Class
13 for all minimum wages. Accordingly, Plaintiffs and the Class are entitled to recover penalties pursuant
14 to California Labor Code §§ 1197.1 and 1199 in addition to any other applicable penalties.

15 43. Accordingly, Plaintiffs and the Class are entitled to recover minimum wages for all non-
16 overtime hours worked for Defendants.

17 44. By and through the conduct described above, Plaintiffs and the Class have been deprived
18 of their rights to be paid wages earned by virtue of their employment with Defendants.

19 45. By virtue of the Defendants’ unlawful failure to pay additional compensation to
20 Plaintiffs and the Class for their non-overtime hours worked without pay, Plaintiffs and the Class
21 suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiffs
22 and the Class, but which exceed the jurisdictional minimum of this Court, and which will be ascertained
23 according to proof at trial.

24 46. By failing to keep adequate time records required by California Labor Code § 1174(d),
25 Defendants have made it difficult to calculate the full extent of minimum wage compensation due
26 Plaintiffs and the Class.

47. Pursuant to California Labor Code § 1194.2, Plaintiffs and the Class are entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

48. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiffs and the Class were entitled to be paid twice a month at rates required by law, including minimum wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiffs and the Class all such wages due, and failed to pay those wages twice a month. Alternatively, to the extent Defendants paid weekly, they failed to comply with Labor Code §204b.

49. Plaintiffs and the Class are entitled to seek recovery of all unpaid minimum wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 204, 204b, 218.5, 218.6, 1194, 1197, and 1198.

SECOND CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

50. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 26 in this Second Amended Complaint.

51. California Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage Orders.

52. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

1 53. In accordance with Labor Code § 1194 and the Applicable Wage Orders, Plaintiffs and
2 the Class could not then agree and cannot now agree to work for a lesser wage than the amount provided
3 by Labor Code § 510 or the Applicable Wage Orders.

4 54. IWC Wage Order 14-2001, section 3(A), is similar, but provides in pertinent part:

5 “(1) Such employees shall not be employed more than ten (10) hours in any
6 one workday or more than six (6) days in any workweek unless the
7 employee receives one and one-half (1½) times such employee’s regular
8 rate of pay for all hours worked over ten (10) hours in any workday and
9 for the first eight (8) hours on the seventh (7th) day of work and double
10 the employee’s regular rate of pay for all hours worked over eight (8) on
11 the seventh (7th) day of work in the workweek.

12 “(2) For employers of more than 25 employees:

13 “(a) Starting January 1, 2019, an employee shall not be employed more than
14 nine and one-half (9½) hours per workday or fifty-five (55) hours per
15 workweek unless the employee receives one and one-half (1½) times
16 such employee’s regular rate of pay for all hours worked over nine and
17 one-half (9½) hours in any one workday or more than fifty-five (55)
18 hours in any one workweek.

19 “(b) Starting January 1, 2020, an employee shall not be employed more than
20 nine (9) hours per workday or fifty (50) hours per workweek unless the
21 employee receives one and one-half (1½) times such employee’s regular
22 rate of pay for all hours worked over nine (9) hours in any one workday
23 or more than fifty (50) hours in any one workweek.” (Cal. Code of Regs.,
24 tit. 8, § 11140, subd. 3.)

25 55. At all times relevant hereto, Plaintiffs and the Class have worked more than eight hours
26 in a workday, as employees of Defendants.

1 56. At all times relevant hereto, Defendants failed to pay Plaintiffs and the Class overtime
2 compensation for the hours they have worked in excess of the maximum hours permissible by law as
3 required by California Labor Code § 510 and 1198. Plaintiffs and the Class are regularly required to
4 work overtime hours.

5 57. Defendants also had a policy and practice of denying Plaintiffs and the Class meal
6 breaks, but nevertheless deducting meal break time from their pay. As a result, Plaintiffs and Class
7 Member's on-the-clock hours were unlawfully reduced below what was actually worked and, by
8 extension, overtime hours were also reduced below what was actually worked. Plaintiffs and the Class
9 were thus periodically shorted the full amount of overtime pay lawfully owed.

10 58. Moreover, during the relevant statutory periods, Defendants had a policy and practice
11 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when
12 Defendants paid overtime wages to Plaintiffs and the Class, Defendants failed to include all
13 compensation when calculating the regular rate of pay used in overtime calculations and when paying
14 overtime.

15 59. For instance, Plaintiffs and the Class would often receive, along with their hourly rates
16 of pay for their working hours, additional remuneration and/or non-discretionary bonus pay.
17 Defendants, however, calculated the regular rate of pay for Plaintiffs and the Class without factoring
18 into the regular rate of pay all other non-hourly pay earnings received during the pay period. As a
19 result, Plaintiffs and the Class were underpaid overtime wages when they worked in excess of eight
20 hours in any workday and/or forty hours in a workweek when such additional forms of remuneration
21 were earned.

22 60. At all times relevant hereto, Plaintiffs and the Class worked double-time hours but
23 Defendants did not compensate them at twice their regular rate of pay for such hours in accordance
24 with California law.

25 61. By its practice of periodically requiring Plaintiffs and the Class to work in excess of
26 eight hours in a workday and/or forty hours in a workweek without compensating them at the rate of
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1 one and one-half (1½) their regular rate of pay, Defendants willfully violated the provisions of Labor
2 Code §§ 510, 1194, and 1199.

3 62. These actions were and are in clear violation of California's overtime laws as set forth
4 in Labor Code §§ 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8, §§
5 11010, 11080, 11130.) As a result of Defendants' faulty policies and practices, Plaintiffs and the Class
6 were not compensated for all hours worked or paid accurate overtime compensation.

7 63. By virtue of Defendants' unlawful failure to pay additional premium rate compensation
8 to the Plaintiffs and the Class for their overtime hours worked, Plaintiffs and the Class have suffered,
9 and will continue to suffer, damages in amounts which are presently unknown to them, but which
10 exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at
11 trial.

12 64. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants
13 have made it difficult to calculate the full extent of overtime compensation due to Plaintiffs and the
14 Class.

15 65. Plaintiffs and the Class also request recovery of overtime compensation according to
16 proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as the
17 assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor
18 Code and/or other statutes.

19 66. California Labor Code § 204 requires employers to provide employees with all wages
20 due and payable twice a month. The Wage Orders also provide that every employer shall pay to each
21 employee, on the established payday for the period involved, overtime wages for all overtime hours
22 worked in the payroll period. Defendants failed to provide Plaintiffs and the Class with all
23 compensation due, in violation of California Labor Code § 204.

24 **THIRD CAUSE OF ACTION**

25 **(Against All Defendants for Failure to Provide Meal Periods)**

26 67. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
27 through 26 in this Second Amended Complaint.
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1 68. Under California law, Defendants have an affirmative obligation to relieve Plaintiffs
2 and the Class of all duty in order to take their first daily meal periods no later than the start of Plaintiffs
3 and the Class' sixth hour of work in a workday, and to take their second meal periods no later than the
4 start of the eleventh hour of work in the workday. Section 512 of the California Labor Code, and
5 Section 11 of the applicable Wage Orders require that an employer provide duty-free meal periods of
6 at least 30 minutes for each five-hour period worked. (Lab. Code, § 512, subd. (a) ["An employer shall
7 not employ an employee for a work period of more than five hours per day without providing the
8 employee with a meal period of not less than 30 minutes"]; Cal. Code of Regs., tit. 8, §§ 11080,
9 11130, 11140 ["No employer shall employ any person for a work period of more than five (5) hours
10 without a meal period of not less than 30 minutes"].)

11 69. Similarly, an employee who works more than ten hours per day is entitled to receive a
12 second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) ["An
13 employer shall not employ an employee for a work period of more than 10 hours per day without
14 providing the employee with a second meal period of not less than 30 minutes"].)

15 70. During the applicable statutory periods here, Plaintiffs and the Class were periodically
16 denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to Defendants'
17 unlawful meal period policy and practices. As a result of Defendants' uniform meal period policies
18 and practices, Plaintiffs and the Class were often not permitted to take compliant first meal periods
19 before the end of the fifth hour of work. Plaintiffs and the Class were also periodically not permitted
20 to take second meal periods for shifts in excess of ten hours. Defendants thus violated Labor Code §
21 512 and the Applicable Wage Orders by failing to advise, authorize, or permit Plaintiffs and the Class
22 to receive thirty-minute, off-duty meal periods within the first five hours of their shifts.

23 71. It is a violation of Section 226.7 of the California Labor Code for an employer to require
24 any employee to work during any meal period mandated under any Wage Order. Labor Code § 226.7
25 provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery
26 period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
27 Industrial Welfare Commission." (Lab. Code, § 226.7, subd. (b).) Labor Code § 226.7, subdivision
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1 (c), and the Applicable Wage Orders further obligate employers to pay employees one additional hour
2 of pay at the employee's regular rate of compensation for each workday that the meal period is not
3 provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140 ["If an
4 employer fails to provide an employee a meal period in accordance with the applicable provisions of
5 this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
6 compensation for each workday that the meal period is not provided."].)

7 72. Accordingly, for each day that Plaintiffs and the Class did not receive compliant meal
8 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code § 226.7
9 and the Applicable Wage Orders. Defendants, however, failed to pay Plaintiffs and the Class applicable
10 meal period premiums for many workdays that the employees did not receive a compliant meal period.
11 Thus, Defendants have violated Labor Code § 226.7 and the Applicable Wage Orders.

12 73. Despite these legal requirements, Defendants regularly failed to provide Plaintiffs and
13 the Class with meal periods as required by California law. By their failure to permit and authorize
14 Plaintiffs and the Class to take all meal periods as alleged above (or due to the fact that Defendants
15 made it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully
16 violated the provisions of Section 226.7 of the California Labor Code and the applicable Wage Orders.

17 74. Under California law, Plaintiffs and the Class are entitled to be paid one hour of
18 additional wages for each workday he or she was not provided with all required meal period(s), plus
19 interest thereon.

20 21 **FOURTH CAUSE OF ACTION**

22 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

23 75. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
24 through 26 in this Second Amended Complaint.

25 76. Defendants are required by California law to authorize and permit breaks of 10
26 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two
27 hours). Pursuant to California Labor Code §§ 512 and 226.7 and the Applicable Wage Orders,
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1 Defendants were and are required to permit and authorize all employees compensated, duty-free rest
2 periods of not less than ten minutes for every major fraction of four hours worked. Thus, for example,
3 if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks.
4 Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.
5 It is a violation of Section 226.7 of the California Labor Code for an employer to require any employee
6 to work during any rest period mandated under any Wage Order.

7 77. Defendants periodically did not permit Plaintiffs and the Class to take compliant duty-
8 free rest breaks, free from Defendants' control as required by Labor Code § 226.7 and the Applicable
9 Wage Orders. At all relevant times, Plaintiffs and the Class were periodically not provided with
10 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or
11 major fraction thereof due to Defendants' unlawful rest period policies/practices. Plaintiffs and the
12 Class were often expected and required to continue working through rest periods to meet the work
13 expectations set by Defendants. In some cases when Plaintiffs or the Class worked more than ten hours
14 in a shift, Defendants failed to authorize and/or permit a third mandated rest period. As a result,
15 Plaintiffs and the Class were periodically unable to take compliant rest periods.

16 78. Despite these legal requirements, Defendants failed to authorize Plaintiffs and the Class
17 to take rest breaks, regardless of whether employees worked more than 4 hours in a workday. By their
18 failure to permit and authorize Plaintiffs and the Class to take rest periods as alleged above (or due to
19 the fact that Defendants made it impossible or impracticable to take these uninterrupted rest periods),
20 Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and the
21 applicable Wage Orders.

22 79. In addition to failing to authorize and permit compliant rest periods, Defendants failed
23 to compensate Plaintiffs and the Class one hour's worth of pay at their regular rate of compensation
24 when they were not provided with a compliant rest period in accordance with Labor Code § 226.7,
25 subdivision (c). Each failure to authorize rest breaks as so required is itself a violation of California's
26 rest break laws. Thus, under California law, Plaintiffs and the Class are entitled to be paid one hour of
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1 premium wages rate for each workday he or she was not provided with all required rest break(s), plus
2 interest thereon.

3 **FIFTH CAUSE OF ACTION**

4 **(Against All Defendants for Failure to Indemnify Necessary Business Expenses)**

5 80. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
6 through 26 in this Second Amended Complaint.

7 81. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states
8 that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred
9 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
10 to the directions of the employer.”

11 82. Defendants violated Labor Code § 2802 and the IWC Wage Orders, by failing to pay
12 and indemnify the Plaintiffs and the Class for their necessary expenditures and losses incurred in direct
13 consequence of the discharge of their duties or of their obedience to directions of Defendants.

14 83. Plaintiffs and the Class paid out of pocket for necessary business expenditures incurred
15 as a direct consequence and requirement of performing their job duties, including the costs associated
16 with their personal cell phone they required to perform their work. Despite knowing that Plaintiffs and
17 the Class incurred these necessary business expenses, and requiring Plaintiffs and the Class to use such
18 items, Defendants did not reimburse them, thereby failing to comply with Labor Code § 2802.

19 84. As a result, Plaintiffs and the Class were damaged at least in the amounts of the expenses
20 they paid, or which were deducted by Defendants from their wages.

21 85. Plaintiffs and the class they represent are entitled to attorney’s fees, expenses, and costs
22 of suit pursuant to Labor Code § 2802(c) and interest pursuant to Labor Code § 2802(b).

23 **SIXTH CAUSE OF ACTION**

24 **(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time** 25 **Penalties)**

26 86. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
27 through 26 in this Second Amended Complaint.
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1 87. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an
2 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
3 payable immediately, and that if an employee voluntarily leaves his or her employment, his or her
4 wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the
5 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which
6 case the employee is entitled to his or her wages at the time of quitting.

7 88. Within the applicable statute of limitations, the employment of Plaintiffs and the Class
8 ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However,
9 during the relevant time period, Defendants failed, and continue to fail to pay terminated Class
10 Members, without abatement, all wages required to be paid by California Labor Code §§ 201 and 202
11 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

12 89. Defendants' failure to pay Plaintiffs and the Class who are no longer employed by
13 Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours
14 of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

15 90. California Labor Code § 203 provides that if an employer willfully fails to pay wages
16 owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a penalty
17 wage from the due date, and at the same rate until paid or until an action is commenced; but the wages
18 shall not continue for more than thirty (30) days.

19 91. Plaintiffs and the Class are entitled to recover from Defendants their additionally
20 accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
21 maximum pursuant to California Labor Code § 203.

22 92. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiffs and the Class
23 are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this
24 action.

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98. Plaintiffs and the Class are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class Member from Defendants pursuant to Labor Code § 226, subdivision (e), along with costs and reasonable attorneys' fees.

99. Calculation of the true wage entitlement for Plaintiffs and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiffs and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

100. Plaintiffs and the Class are entitled to recover from Defendants their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a).

101. Plaintiffs and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this §, pursuant to California Labor Code § 226(h).

EIGHTH CAUSE OF ACTION

(Against all Defendants for Violation of California Business & Professions Code §§ 17200, et seq.)

102. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 26 in this Second Amended Complaint.

103. Defendants, and each of them, are “persons” as defined under California Business & Professions Code § 17201.

104. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, the Class, and to the general public. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

106. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Minimum Wages

107. Defendants' failure to pay minimum wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Overtime Wages

108. Defendants' failure to pay overtime compensation and other benefits in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Maintain Accurate Records of All Hours Worked

109. Defendants' failure to maintain accurate records of all hours worked in accordance with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

110. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Authorize and Permit Rest Periods

111. Defendants' failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Indemnify Necessary Business Expenses

112. Defendants' failure to indemnify employees for necessary business expenses in accordance with California Labor Code § 2802 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Provide Accurate Itemized Wage Statements

113. Defendants' failure to provide accurate itemized wage statements in accordance with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

114. By and through their unfair, unlawful and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

115. Plaintiffs and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

116. Plaintiffs, individually, and on behalf of members of the putative Class, is entitled to, and do, seek such relief as may be necessary to disgorge money and/or property which the Defendants have wrongfully acquired, or of which Plaintiffs and the Class have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiffs and the Class are not obligated to establish individual knowledge of the wrongful practices of Defendants in order to recover restitution.

117. Plaintiffs, individually, and on behalf of members of the putative class, are further entitled to and do seek a declaration that the above described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

118. Plaintiffs, individually, and on behalf of members of the putative class, have no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiffs, individually, and

1 on behalf of members of the putative Class, have suffered and will continue to suffer irreparable harm
2 unless the Defendants, and each of them, are restrained from continuing to engage in said unfair,
3 unlawful and/or fraudulent business practices.

4 119. Plaintiffs also allege that if Defendants are not enjoined from the conduct set forth herein
5 above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

6 120. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiffs and
7 putative Class Members are entitled to restitution of the wages withheld and retained by Defendants
8 during a period that commences four years prior to the filing of this complaint; a permanent injunction
9 requiring Defendants to pay all outstanding wages due to Plaintiffs and Class Members; an award of
10 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and
11 an award of costs.

12 **NINTH CAUSE OF ACTION**

13 **(Against all Defendants for Civil Penalties Pursuant to Private Attorneys General Act of 2004**
14 **for Violations of Labor Code §§ 201, 202, 203, 204, 206, 207, 208, 210, 226, 226.3, 226.7, 256,**
15 **510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other**
16 **Provisions of the California Labor Code)**

17 121. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
18 through 26 in this Second Amended Complaint.

19 122. Based on the above allegations incorporated by reference, Defendants violated Labor
20 Code §§ 201, 202, 203, 204, 206, 207, 208, 210, 221, 222, 223, 225.5, 226, 226.3, 226.7, 246(i), 256,
21 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that
22 may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11080,
23 11130), and others that may be applicable.

24 123. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code §§ 2698
25 through 2699.6 because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 225.5,
26 226, 226.3, 226.7, 248.5, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,

1 1199, 2802, 2804, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of
2 Regs., tit. 8, §§ 11010, 11080, 11130), and others that may be applicable.

3 124. Plaintiffs have fully and completely exhausted administrative remedies under PAGA
4 prior to proceeding with the PAGA claims stated in this complaint. Plaintiff Jorge Alcala filed a PAGA
5 notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified
6 mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as
7 prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.) Similarly, on March 28, 2023, Plaintiff Jose
8 Alvarado gave written notice by online filing to the LWDA (case no. LWDA-CM-945011-23) and by
9 certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated
10 against Plaintiff Jose Alvarado and current and former Aggrieved Employees, including the facts and
11 theories to support the violations.

12 125. As required by PAGA, Plaintiff Jorge Alcala submitted the \$75.00 filing fee with the
13 LWDA by regular mail. Pursuant to Labor Code § 2699.3, subdivision (a)(2)(A), no notice was
14 received by Plaintiff Jorge Alcala from the LWDA evidencing its intention to investigate within sixty-
15 five calendar days of the postmark date of the PAGA notice. Plaintiff Jorge Alcala is therefore entitled
16 to commence and proceed with a civil action pursuant to Labor Code § 2699. Plaintiff Jose Alvarado
17 also paid the LWDA filing fee. At the time of this filing, more than 65 days have elapsed since Plaintiff
18 Jose Alvarado provided notice, but the LWDA has not indicated that it intends to investigate
19 Defendants’ Labor Code violations discussed in the notice. Accordingly, Plaintiff Jose Alvarado may
20 commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for
21 violations of the Labor Code described in this Complaint.

22 126. Under Labor Code § 2699, subdivision (f)(2), and 2699.5, for each such violation,
23 Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
24 of trial subject to the following formula:

- 25 (a) \$100 for the initial violation per employee per pay period; and
26 (b) \$200 for each subsequent violation per employee per pay period.
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1 127. Moreover, under Labor Code § 256, the Aggrieved Employees are entitled to penalties
2 “in an amount not exceeding 30 days pay as waiting time under the terms of Section 203” through
3 PAGA. (Lab. Code, §§ 256, 2699.)

4 128. These penalties must be allocated seventy-five percent to the Labor and Workforce
5 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties
6 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
7 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
8 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
9 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code § 226,
10 subdivision (e), and penalties for Labor Code § 226, subdivision (a), violations]; see also *Hernandez*
11 *v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL 2373372, at
12 *17 fn. 70 [noting that federal courts applying California law have found that “PAGA penalties can be
13 stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for different Labor Code
14 violations.”], internal quotation marks omitted).

15 129. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs and
16 all Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code §
17 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants’ violations of Labor Code
18 § 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp. 780,
19 788.)

20 130. For violations of Labor Code § 226, subdivision (a), Plaintiffs seek the default penalty
21 provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
22 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
23 dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per
24 employee for each violation in a subsequent citation, for which the employer fails to provide the
25 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”
26 Accordingly, through PAGA and to the extent permitted by law Plaintiffs and the Aggrieved
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1 Employees are entitled to recover penalties for violations of Labor Code § 226.3 and seeks default
2 PAGA penalties for each of Defendants' numerous violations of Labor Code § 226, subdivision (e).

3 131. Labor Code § 210 provides that "in addition to, an entirely independent and apart from,
4 any other penalty provided in this article, every person who fails to pay the wages of each employee as
5 provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial
6 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent
7 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
8 employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation
9 policies and practices, Plaintiffs and the Aggrieved Employees are also entitled to recover penalties
10 under Labor Code § 210 through PAGA.

11 132. Labor Code § 1197.1 authorizes a civil penalty, restitution of wages, and liquidated
12 damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is intentionally
13 committed for each underpaid employee for each pay period for which the employee is underpaid, and
14 (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific offense for
15 each underpaid employee for each pay period for which the employee is underpaid regardless of
16 whether the initial violation is intentionally committed. Accordingly, through PAGA and to the extent
17 permitted by law, Plaintiffs and the Aggrieved Employees are entitled to recover pursuant to Labor
18 Code § 1197.1.

19 133. Plaintiffs were compelled to retain the services of counsel to file this action to protect
20 their interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties
21 owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which Plaintiffs are
22 also entitled to recover under Labor Code § 2699, subdivision (g)(1).

23 **PRAYER FOR RELIEF**

24 Plaintiffs, individually, and on behalf of all others similarly situated only with respect to the
25 class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

26 **Class Certification**

- 27 1. That this action be certified as a class action with respect to the First, Second, Third,
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1 Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;

2 2. That Plaintiffs be appointed as the representative of the Class; and

3 3. That counsel for Plaintiffs be appointed as Class Counsel.

4 As to the First Cause of Action

5 4. That the Court declare, adjudge and decree that Defendants violated California Labor
6 Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum
7 wages due;

8 5. For general unpaid wages as may be appropriate;

9 6. For pre-judgment interest on any unpaid compensation commencing from the date
10 such amounts were due;

11 7. For liquidated damages;

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

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

15 As to the Second Cause of Action

16 10. That the Court declare, adjudge and decree that Defendants violated California Labor
17 Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
18 wages due;

19 11. For general unpaid wages at overtime wage rates as may be appropriate;

20 12. For pre-judgment interest on any unpaid overtime compensation commencing from
21 the date such amounts were due;

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

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

25 As to the Third Cause of Action

26 15. That the Court declare, adjudge and decree that Defendants violated California Labor
27 Code §§ 226.7 and 512, and the IWC Wage Orders;

1 16. For unpaid meal period premium wages as may be appropriate;

2 17. For pre-judgment interest on any unpaid compensation commencing from the date
3 such amounts were due;

4 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
5 and for costs of suit incurred herein; and

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

7 As to the Fourth Cause of Action

8 20. That the Court declare, adjudge and decree that Defendants violated California Labor
9 Code §§ 226.7 and 512, and the IWC Wage Orders;

10 21. For unpaid rest period premium wages as may be appropriate;

11 22. For pre-judgment interest on any unpaid compensation commencing from the date
12 such amounts were due;

13 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
14 and for costs of suit incurred herein; and

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

16 As to the Fifth Cause of Action

17 25. That the Court declare, adjudge and decree that Defendants violated Labor Code §
18 2802 and the IWC Wage Orders;

19 26. For general unpaid wages and reimbursement of business expenses as may be
20 appropriate;

21 27. For pre-judgment interest on any unpaid compensation commencing from the date
22 such amounts were due;

23 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

25 As to the Sixth Cause of Action

26 30. That the Court declare, adjudge and decree that Defendants violated California Labor
27 Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
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1 termination of the employment;

2 31. For statutory wage penalties pursuant to California Labor Code § 203 for former
3 employees who have left Defendants' employ;

4 32. For pre-judgment interest on any unpaid wages from the date such amounts were due;

5 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

7 As to the Seventh Cause of Action

8 35. That the Court declare, adjudge and decree that Defendants violated the record
9 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
10 willfully failed to provide accurate itemized wage statements thereto;

11 36. For penalties and actual damages pursuant to California Labor Code § 226(e);

12 37. For injunctive relief to ensure compliance with this section, pursuant to California
13 Labor Code § 226(h);

14 38. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

16 As to the Eighth Cause of Action

17 40. That the Court declare, adjudge and decree that Defendants violated California
18 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
19 (including minimum and overtime wages), failing to provide meal periods, failing to maintain
20 accurate records of meal periods, failing to authorize and permit rest periods, and failing to
21 maintain accurate records of all hours worked and meal periods, failing to furnish accurate wage
22 statements, and failing to indemnify necessary business expenses;

23 41. For restitution of unpaid wages to Plaintiffs and all Class Members and prejudgment
24 interest from the day such amounts were due and payable;

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

43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

44. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

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

As to the Ninth Cause of Action

46. For the failure to maintain accurate employment records, penalties pursuant to Labor Code §§ 226.3, 1174.5, and others that may be applicable;

47. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in Labor Code § 2699, subdivision (f)(2), in the representative action brought on behalf of Plaintiffs and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor Code § 210 and Labor Code § 256;

48. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

49. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, Code of Civil Procedure § 1021.5, and others as may be applicable;

50. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and

51. For such other and further relief, this Court may deem just and proper.

1 Dated: October 9, 2024

MELMED LAW GROUP P.C.

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3 *Hannah Becker*

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5 **HANNAH BECKER**

6 Attorney for Plaintiff Jorge Alcala
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF FRESNO

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to the action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, October 9, 2024, I served the foregoing document(s) described as:

- **JOINT STIPULATION AND [PROPOSED] ORDER FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

By causing a true copy thereof to be sent to the following individuals and/or parties:

SAGASER, WATKINS & WEILAND PC

Ian B. Weiland

Ian@sw2law.com

Michael J. Conway

mikec@sw2law.com

Tristian Matthews

Tristan@sw2law.com

5260 North Palm Avenue, Suite 400

Fresno, CA 93704

[XX] BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 9, 2024, in Los Angeles, California.

/s/ Jennifer Gonzalez
Jennifer Gonzalez