

Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
Andrew D. Weaver (SBN 318935)
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com
aweaver@schneiderwallace.com

Attorneys for Plaintiff and the Putative Class

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

MARIO LARA, on behalf of himself and the
Class members,

Plaintiff,

vs.

DREYER'S GRAND ICE CREAM, INC.,
DREYER'S GRAND ICE CREAM
HOLDINGS, INC., FRONERI,
INTERNATIONAL LIMITED, AND
FRONERI US, INC.; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22CV024868

**FIRST AMENDED CLASS AND PAGA
COMPLAINT FOR VIOLATIONS OF:**

- (1) Failure to Pay for All Hours Worked (Cal. Lab. Code § 204);**
- (2) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1);**
- (3) Failure to Pay Overtime Wages (Cal. Labor Code §§ 200, 510, 1194);**
- (4) Failure to Provide or Make Available Meal Periods (Cal. Lab. Code §§ 226.7 and 512);**
- (5) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);**
- (6) Failure to Provide Timely and Accurate Itemized Wage Statements (Cal. Lab. Code § 226);**
- (7) Waiting Time Penalties (Cal. Lab. Code §§ 201-203);**
- (8) Failure to Reimburse for Necessary Business Expenses (Cal. Labor Code § 2802);**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (9) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
- (10) The Private Attorneys General Act (Labor Code 2699(a) *et seq.*) ;
- (11) The Private Attorneys General Act (Labor Code § 2699(f) *et seq.*)

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff Mario Lara (“Plaintiff”) brings this action on behalf of himself and other
3 similarly situated individuals against Dreyer’s Grand Ice Cream, Inc., Dreyer’s Grand Ice Cream
4 Holdings, Inc., Froneri International Limited, and Froneri US, Inc. (“Defendants”), as current and
5 former hourly, non-exempt employees of Defendants throughout California during the time period
6 starting four years prior to the filing of this Complaint until the resolution of this action (“Class
7 members”) to challenge Defendants’ violations of California wage and hour laws. Plaintiff brings
8 his Labor Code Private Attorneys General Act (“PAGA”) claim on behalf of the State of California
9 and Aggrieved Employees.

10 2. This action stems from Defendants’ policies and practices of: (1) failing to
11 compensate Plaintiff and putative Class members for all hours worked; (2) failing to pay Plaintiff
12 and putative Class members minimum wage for all hours worked; (3) failing to pay Plaintiff and
13 putative Class members overtime wages; (4) failing to provide or make available meal periods to
14 Plaintiff and Putative Class members, and failing to pay premium compensation for missed meal
15 periods; (5) failing to authorize and permit Plaintiff and Putative Class members to take rest periods
16 to which they are entitled by law, and failing to pay premium compensation for missed rest periods;
17 (6) failing to provide Plaintiff and putative Class members true and accurate itemized wage
18 statements; (7) failing to timely pay all wages due upon separation from employment; (8) failing to
19 reimburse Plaintiff and putative Class members for necessary business expenses; and (9) and
20 engaging in unfair business practices.

21 3. Plaintiff seeks damages, penalties, and interest to the full extent permitted by the
22 California Labor Code, PAGA, and Industrial Welfare Commission (“IWC”) Wage Orders, as well
23 as other relief requested herein.

24
25 **SUBJECT MATTER JURISDICTION AND VENUE**

26 4. Venue is proper in this County pursuant to Cal. Code Civ. Proc. § 395(a). Defendants
27 conduct business, have jobsites, and employ Plaintiff and putative Class members in this County,
28 and as a result, the causes of action asserted arose in whole or in part in this County.

5. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the California Labor Code and IWC Wage Orders. The Court also has jurisdiction over Defendants because they are a company authorized to do business in the State of California, and because Defendants, in fact, do business and employ workers in the State of California.

PARTIES

6. Plaintiff Mario Lara is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California.

7. Plaintiff is currently employed by Defendants for various projects as an Operator/MOP. Plaintiff's employment with Defendants started May 11, 2022. Plaintiff works for Defendants in Bakersfield, California.

8. Plaintiff is informed, believes, and thereon alleges that Dreyer's Grand Ice Cream, Inc. and Dreyer's Grand Ice Cream Holdings, Inc. are Delaware stock corporations headquartered in Oakland, California. Dreyer's Grand Ice Cream, Inc. and Dreyer's Grand Ice Cream Holdings, Inc. are registered to do business in California, do business in California and employ and employed hourly, non-exempt employees, including Plaintiff and the putative Class members in California. Dreyer's Grand Ice Cream, Inc. and Dreyer's Grand Ice Cream Holdings, Inc. may be served with process by serving its registered agent, CT Corporation Systems, 330 N Brand Blvd., Glendale, CA 91203.

9. Plaintiff is informed, believes and thereon alleges that Froneri US, Inc. is a Delaware stock corporation headquartered in Oakland California. Froneri US, Inc. is registered to do business in California, do business in California and employ and employed hourly, non-exempt employees, including Plaintiff and the putative Class members in California. Froneri US, Inc. is headquartered at 5929 College Ave., Oakland, California 94618.

10. Plaintiff is informed, believes, and thereon alleges that Froneri International Limited is a foreign company headquartered North Yorkshire, DL7 9UL, United Kingdom. Froneri International Limited is registered to do business in California, does business in California and employs and employed hourly, non-exempt employees, including Plaintiff and the putative Class

1 members in California. Froneri International Limited's headquarters are located Leeming Bar
2 Industrial Estate, Leeming Bar, North Yorkshire, Northallerton DL7 9UL, England, United
3 Kingdom.

4 11. Defendants employ and/or employed Plaintiff and putative Class members because
5 Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping
6 practices, and daily work of Plaintiff and Class members.

7 12. At all material times, Defendants have done business under the laws of California,
8 have had places of business in California, including in this judicial district, and have employed
9 putative Class members in this District and elsewhere throughout California. Defendants are a
10 "person" as defined in Cal. Lab. Code § 18 and an "employer" as that term is used in the Cal. Lab.
11 Code, the IWC Wage Orders regulating wages, hours, and working conditions, and the Cal. Bus. &
12 Prof. Code § 17201.

13 14 **FACTUAL ALLEGATIONS**

15 13. Upon information and belief, Defendants are manufacturers and retailers of ice cream
16 and frozen dessert. Defendants operate throughout the United States, including the state of
17 California. Defendants employ hundreds of hourly, non-exempt workers similarly situated to
18 Plaintiff in California.

19 14. Plaintiff worked for Defendants as an operator in Bakersfield, California from May
20 11, 2022, to present. Plaintiff's primary duties included but were not limited to operating factory
21 machinery, performing maintenance and repairs on factory machinery, and reporting any machinery
22 or line issues to his direct leads and supervisors. Plaintiff was classified as an hourly, non-exempt
23 employee and was paid an hourly rate of \$24.

24 15. Defendants employ and have employed hundreds of hourly, non-exempt workers
25 similarly situated to Plaintiff in California, including but not limited to supervisors, team leads,
26 operators, line workers, and other employees with similar job duties.

27 16. Although Plaintiff's shifts may vary in length, Plaintiff usually worked ten (10) to
28 twelve (12) hours per shift, five (5) to six (6) shifts per week. Plaintiff worked approximately

seventy (70) hours a week.

17. Defendants regularly fail to provide Plaintiff and putative Class members compliant meal periods. Defendants' policies, practices, and procedures require Plaintiff and putative Class members to routinely skip their meal periods, or cut their meal periods short, yet do not provide them with requisite premium payments for missed meal periods.

18. Plaintiff and putative Class members are routinely denied compliant meal periods for at least three reasons: (i) Defendants do not provide an adequate number of staff so that Plaintiff and putative Class members can get relief from their duties to take meal periods; (ii) Defendants interrupt Plaintiff and putative Class members' meal periods to make them get back to work; and (iii) Plaintiff and putative Class members are often too busy with work during the day to have time to take bona fide meal periods.

19. When Plaintiff and putative Class members do attempt a meal period, such are untimely and/or shortened, *i.e.*, after the end of the fifth hour of work and/or less than thirty minutes. Plaintiff estimates that when he did take a meal period, his meal periods were late five (5) times a week because he was not able to leave the line until he received permission from his lead. As a result, Plaintiff and Class members are not provided duty-free and timely thirty-minute meal periods during which they should be completely relieved of any duty, by the end of the fifth hour of work.

20. In addition, for each day Plaintiff and putative Class members work shifts of more than ten hours, Defendants systematically deny Plaintiff and putative Class members a timely second meal period. Similarly, Plaintiff and putative Class members do not receive requisite premium payments for these missed second meal periods.

21. Further, Plaintiff and putative Class members are routinely denied compliant rest periods. Much like the reasons that Plaintiff and putative Class members are denied compliant meal periods, Plaintiff and putative Class members do not receive compliant rest periods because they are required to stay on the line for the entirety of their rest periods, they are too busy to find the time for rest periods, and Defendants are too understaffed for Plaintiff and putative Class members to be relieved from their duties.

22. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply

1 these meal and rest period policies and practices across all Defendants' facilities throughout
2 California.

3 23. Defendants routinely require Plaintiff and putative Class members to perform work
4 off-the-clock and without compensation. Plaintiff and putative Class members are unable to put this
5 time back on their timeclocks. This policy results in Plaintiff and putative Class members working
6 up to thirty minutes of unpaid, off-the-clock work. Because this time spent working off-the-clock
7 occurs during shifts when Plaintiff and putative Class members are working eight (8) hours or more,
8 it should be paid at the overtime premium of 1.5 times Plaintiff and putative Class members' regular
9 rate as required under California law.

10 24. Plaintiffs and putative Class members are also required to pay out of pocket for
11 necessary business expenses accrued as a result of their work for Defendants, but they are not
12 reimbursed for these expenses. Defendants require Plaintiff and putative Class members to use
13 their personal cellphone to notify leads and supervisors of any needed machine maintenance and
14 issues with the manufacturing line. Plaintiff and putative Class members are also required to
15 provide their own tools in order to perform maintenance work on manufacturing machinery when
16 needed. However, Defendants do not reimburse their workers for these expenditures.

17 25. Plaintiff is informed, believes, and thereon alleges that Defendants utilize the same
18 or substantially similar timekeeping mechanisms throughout all its facilities in California.

19 26. Defendants' common course of wage-and-hour abuse also includes routinely failing
20 to maintain true and accurate records of the hours worked by Plaintiff and putative Class members.

21 27. As a result of the aforementioned violations, Plaintiff and putative Class members
22 are provided with untrue and inaccurate wage statements as such statements do not include payment
23 for all hours worked, including overtime and premium pay for missed meal and rest periods.

24 28. Additionally, Plaintiff and Class Members did not receive all wages during
25 employment and following separation from employment, including payment for time spent working
26 during meal periods, as well as premium payments for noncompliant meal periods, rest periods, and
27 missed second meal periods.
28

1 29. Putative Class members are employed by Defendants and perform work materially
2 similar to Plaintiff.

3 30. Putative Class members report to facilities owned, operated, or managed by
4 Defendants to perform their jobs.

5 31. Putative Class members perform their jobs under Defendants' supervision using
6 materials and technology approved and supplied by Defendants.

7 32. Putative Class members are required to follow and abide by Defendants' common
8 work, time, and pay policies and procedures in the performance of their jobs.

9 33. At the end of each pay period, putative Class members receive wages from
10 Defendants that are determined by common systems and methods that Defendants select and
11 control.

12 34. Defendants pay putative Class members on an hourly rate basis.

13 35. Defendants' method of paying Plaintiff and putative Class members is willful and not
14 based on a good faith and reasonable belief that their conduct complied with California law.

15 36. Defendants' unlawful conduct has been widespread, repeated, and consistent
16 throughout Defendants' California facilities.

17 37. Defendants know or should know that their policies and practices are unlawful and
18 unfair.

19 38. Defendants' conduct is willful, carried out in bad faith, and causes significant
20 damages to non-exempt hourly employees in an amount to be determined at trial.

21 39. Defendants' failure to compensate for all hours worked, including minimum wage
22 and overtime, failure to provide and make available timely and compliant meal periods, failure to
23 authorize and permit rest periods, failure to provide timely accurate wage statements, failure to
24 provide wages upon separation, and failure to reimburse for necessary business expenses to all
25 current and former hourly, non-exempt employees employed by Defendant throughout California
26 ("Aggrieved Employees") gives rise to civil penalties pursuant to the PAGA.

27 ///

28

1 **CLASS ACTION ALLEGATIONS**

2 40. Plaintiff brings this case as a class action on behalf of himself and all others similarly
3 situated pursuant to Cal. Code Civ. Proc. § 382. The putative Class that Plaintiff seeks to represent
4 is defined as follows:

5 **All current and former hourly, non-exempt employees of Defendants throughout**
6 **California during the time period starting four years prior to the filing of this**
7 **Complaint until the resolution of this action (the “Class”).**

8 41. This action has been brought and may properly be maintained as a class action
9 because there is a well-defined community of interest in the litigation and the putative Class is
easily ascertainable.

10 a. **Numerosity:** The potential Members of the class are so numerous that joinder of all
11 the Members of the Class is impracticable. Plaintiff is informed and believes that the
12 number of California Class Members exceeds 600. This volume makes bringing the
13 claims of each individual member of the Class before this Court impracticable.
14 Likewise, joining each individual member of the California Class as a plaintiff in this
15 action is impracticable. Furthermore, the identities of the California Class will be
16 determined from Defendant’s records, as will the compensation paid to each of them.
17 As such, a class action is a reasonable and practical means of resolving these claims.
18 To require individual actions would prejudice the California Class and Defendants.

19 b. **Commonality:** There are questions of law and fact common to Plaintiff and the
20 putative Class that predominate over any questions affecting only individual
21 members of the putative Class. These common questions of law and fact include, but
22 are not limited to:

- 23 i. Whether Defendants fail to compensate putative Class members for all
24 hours worked, including at overtime compensation, in violation of the Cal.
25 Lab. Code and Wage Orders;
- 26 ii. Whether Defendants have a policy and/or practice of requiring putative
27 Class members to be in the control of Defendants, spend time primarily
28 for the benefit of Defendants, and work for Defendants off-the-clock and

- 1 without compensation;
- 2 iii. Whether Defendants fail to authorize and permit, make available, and/or
- 3 provide putative Class members with compliant meal and rest periods to
- 4 which they are entitled in violation of the Cal. Lab. Code and Wage
- 5 Orders;
- 6 iv. Whether Defendants fail to provide putative Class members with timely,
- 7 accurate itemized wage statements in violation of the Cal. Lab. Code and
- 8 Wage Orders;
- 9 v. Whether Defendants fail to timely pay putative Class members for all
- 10 wages owed upon termination of employment.
- 11 vi. Whether Defendants fail to reimburse putative Class members for
- 12 reasonable business expenses that they incur in violation of the Labor
- 13 Code and Wage Orders;
- 14 vii. Whether Defendants violate Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by:
- 15 (a) failing to compensate putative Class members for all hours
- 16 worked, including at minimum wage and at overtime rate wage
- 17 compensation;
- 18 (b) failing to authorize and permit, make available, and/or provide
- 19 putative Class members with compliant meal and rest periods to
- 20 which they are entitled;
- 21 (c) failing to provide putative Class members with timely, accurate
- 22 itemized wage statements;
- 23 (d) failing to reimburse putative Class members' expenses; and
- 24 viii. The proper formula for calculating restitution, damages, and penalties
- 25 owed to Plaintiff and the Class as alleged herein.
- 26 c. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Defendants'
- 27 common course of conduct in violation of law as alleged herein has caused Plaintiff
- 28 and putative Class members to sustain the same or similar injuries and damages.

Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

d. **Adequacy of Representation:** Plaintiff is a member of the Class, does not have any conflicts of interest with other putative Class members, and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent and experienced in litigating large employment class actions, including wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the Class members.

e. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all putative Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each putative Class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

42. The Class may also be certified because the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual members of the Class, and, in turn, would establish incompatible standards of conduct for Defendants.

43. If each individual Class member were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each member of the Class with Defendants' vastly superior financial legal resources.

44. Requiring each individual Class member to pursue an individual remedy would also discourage the assertion of lawful claims by the Class members who would be disinclined to pursue these claims against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well-being.

1 **PAGA ALLEGATIONS**

2 45. Plaintiff also brings this action against Defendants as a proposed representative action
3 on behalf of the Aggrieved Employees, pursuant to California Labor Code §§ 2699, *et seq* (the
4 Private Attorneys General Act or “PAGA”) for recovery of civil penalties against Defendants, for
5 violation of California wage and hour laws stemming from Defendants’ unlawful policies and
6 practices, including all Labor Code violations alleged herein, including: (1) failing to pay Plaintiff
7 and Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff and Aggrieved
8 Employees minimum wage; (3) failing to pay Plaintiff and Aggrieved Employees overtime wages;
9 (4) failing to provide or make available to Plaintiff and Aggrieved Employees the meal periods to
10 which they are entitled by law, and failing to pay premium compensation payment for non-
11 compliant meal periods; (5) failing to authorize and permit rest periods, and failing to pay premium
12 compensation payment for non-compliant rest periods (6) failing to provide Plaintiff and Aggrieved
13 Employees with accurate itemized wage statements; (7) failing to timely pay all wages due upon
14 separation from employment; failing to reimburse Plaintiff and Aggrieved Employees for necessary
15 business expenses; and (8) engaging in unfair business practices. Plaintiff bring this lawsuit on
16 behalf of himself and other hourly, non-exempt employees, seeking monetary relief against
17 Defendants to recover, among other things, unpaid wages, meal period and rest period
18 compensation, interest, attorney’s fees, costs and expenses, and penalties, as well as other relief
19 requested herein, pursuant to Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 256, 510, 512,
20 1182.12, 1194, 1197, 1198, 2698 *et seq*, and the applicable Industrial Welfare Commission
21 (“IWC”) Wage Orders, and Business & Professions Code §§ 17200 *et seq*.

22 46. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff provided the LWDA and Defendants
23 with notice of his intention to file this claim on December 16, 2022. At least sixty-five calendar
24 days have passed without notice from the LWDA or Defendants. Plaintiff satisfied the
25 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

26 ///

27 ///

FIRST CAUSE OF ACTION
Failure to Pay for All Hours Worked
Pursuant to Cal. Lab. Code § 204
(On Behalf of the Class)

47. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

48. Cal. Lab. Code § 200(a) defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.”

49. Cal. Lab. Code § 204 provides that employers must compensate employees for all hours worked “twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

50. IWC Wage Orders 1-2001(2)(G), 7-2001(2)(G), and 8-2001(2)(G) define hours worked as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Orders.

51. Defendants willfully engaged in and continue to engage in a policy and practice of not compensating Plaintiff and putative Class members for all hours worked or spent in Defendants’ control.

52. Defendants regularly require Plaintiff and the putative Class members to complete additional work off-the-clock, without compensation. For instance, and as mentioned above, Plaintiff and putative Class members spend most, if not all of the unrecorded time working for the benefit of Defendants. Defendants do not compensate Plaintiff and putative Class members for their time spent working while clocked out for their noncompliant meal periods.

53. As a result, Defendants fail to track Plaintiff and putative Class members’ actual hours worked, and consequently fail to pay Plaintiff and putative Class members for all hours worked.

54. Defendants require Plaintiff and putative Class members to work off-the-clock without compensation. In other words, Plaintiff and putative Class members are forced to perform

1 work for the benefit of Defendants without compensation.

2 55. In violation of California law, Defendants knowingly and willfully refuse to perform
3 their obligations to provide Plaintiff and putative Class members with compensation for all time
4 worked. Defendants regularly fail to track the time Plaintiff and putative Class members actually
5 work and fail to compensate them for all hours worked.

6 56. Therefore, Defendants committed, and continue to commit, the acts alleged herein
7 knowingly and willfully, and in conscious disregard of Plaintiff and putative Class members' rights.
8 Plaintiff and putative Class members are thus entitled to recover nominal, actual, and compensatory
9 damages, plus interest, attorneys' fees, expenses, and costs of suit.

10 57. As a proximate result of the aforementioned violations, Plaintiff and putative Class
11 members have been damaged in an amount according to proof at time of trial.

12 58. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

13 **SECOND CAUSE OF ACTION**
14 **Failure to Pay Minimum Wages**
Pursuant Cal. Lab. Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1
(On Behalf of the Class)

15 59. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
16 herein.

17 60. During the applicable statutory period, Cal. Lab. Code §§ 1182.12 and 1197, and the
18 Minimum Wage Order were in full force and effect, and required that Defendants' hourly
19 employees receive the minimum wage for all hours worked irrespective of whether nominally paid
20 on a piece rate, or any other basis, at the rate of eleven dollars (\$11.00) per hour commencing
21 January 1, 2018; at the rate of twelve dollars (\$12.00) per hour commencing January 1, 2019; at the
22 rate of thirteen dollars (\$13.00) per hour commencing January 1, 2020; at the rate of fourteen dollars
23 (\$14.00) commencing January 1, 2021; and at the rate of fifteen dollars (\$15.00) commencing
24 January 1, 2022.

25 61. Cal. Lab. Code §1194 states:

26 Notwithstanding any agreement to work for a lesser wage, any employee receiving
27 less than the legal minimum wage or the legal overtime compensation applicable to
28 the employee is entitled to recover in a civil action the unpaid balance of the full
amount of this minimum wage or overtime compensation, including interest thereon,
reasonable attorney's fees, and costs of suit.

1 62. IWC Wage Orders 1-2001(2)(G), 7-2001(2)(G), and 8-2001(2)(G) define hours
2 worked as “the time during which an employee is subject to the control of an employer and includes
3 all the time the employee is suffered or permitted to work, whether or not required to do so.”

4 63. Cal. Lab. Code §1194.2 provides that, in any action under Section 1194 to recover
5 wages because of the payment of a wage less than minimum wage fixed by an order of the
6 commission, an employee shall be entitled to recover liquidated damages in an amount equal to the
7 wages unlawfully unpaid and interest thereon.

8 64. Defendants have maintained policies and procedures which create a working
9 environment where hourly employees are routinely compensated at a rate that is less than the
10 statutory minimum wage. Plaintiffs and putative Class members routinely work time off-the-clock
11 without compensation for this time. For instance, Plaintiff and putative Class members are not
12 compensated for time spent working during meal periods.

13 65. As a direct and proximate result of the unlawful acts and/or omissions of Defendants,
14 Plaintiff and putative Class members have been deprived of minimum wages in an amount to be
15 determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus
16 interest thereon, attorneys’ fees, and costs of suit pursuant to Cal. Lab. Code §§ 1194, 1194.2 and
17 1197.1.

18 66. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

19 **THIRD CAUSE OF ACTION**
20 **Failure to Pay Overtime Wages**
21 **Pursuant to Cal. Lab. Code § 510**
22 **(On Behalf of the Class)**

23 67. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
24 herein.

25 68. Defendants do not compensate Plaintiff and putative Class members with the
26 appropriate overtime rate, as required by California law.

27 69. Cal. Lab. Code § 510 provides, in pertinent part, that:

28 Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
one workday and any work in excess of 40 hours in any one workweek and the first
eight hours worked on the seventh day of work in any one workweek shall be
compensated at the rate of no less than one and one-half times the regular rate of pay

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

70. The IWC Wage Orders 1-2001(3)(A)(1), 7-2001(3)(A)(1), and 8-2001(3)(A)(1) state:

The following overtime provisions are applicable ... employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: . . . One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and ... [d]ouble the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

71. Labor Code § 1194(a) provides that:
Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.

72. Cal. Lab. Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.” All such wages are subject to California’s overtime requirements, including those set forth above.

73. Defendants regularly do not compensate Plaintiff and putative Class members for their overtime hours. For instance, Plaintiff and putative Class members do not receive overtime compensation for time spent working off-the-clock during noncompliant meal periods when the hours worked are in excess of eight (8) hours per day and forty (40) hours per week.

74. Plaintiff and putative Class members work overtime hours for Defendants without being paid overtime premiums in violation of the Labor Code, applicable IWC Wage Orders, and other applicable law.

1 75. Defendants have knowingly and willfully refused to perform their obligation to
2 provide Plaintiff and putative Class members with premium wages for all overtime work. As a
3 proximate result of the aforementioned violations, Defendants have damaged Plaintiff and putative
4 Class members in amounts to be determined according to proof at time of trial.

5 76. Defendants are liable to Plaintiff and putative Class members alleged herein for the
6 unpaid overtime and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an
7 award of attorneys' fees and costs as set forth below.

8 77. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

9 **FOURTH CAUSE OF ACTION**
10 **Failure to Provide or Make Available Meal Periods**
11 **Pursuant to Cal. Lab. Code §§ 226.7 and 512**
12 **(On Behalf of the Class)**

11 78. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 79. Defendants routinely fail to provide or make available complaint meal periods to
14 Plaintiff and Putative Class members.

15 80. Plaintiff's and Class members' schedules regularly prevent them from taking first
16 meal periods and, when applicable, second meal periods throughout the day. Plaintiff and putative
17 Class members do not receive the requisite premium pay for their missed meal periods as required
18 by California law.

19 81. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders require Defendant
20 to provide and make available meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and
21 the Wage Orders prohibit employers from employing an employee for more than five (5) hours
22 without a meal period of not less than thirty minutes, and from employing an employee more than
23 ten (10) hours per day without providing the employee with a second meal period of not less than
24 thirty minutes.

25 82. Unless the employee is relieved of all duty during the thirty-minute meal period, the
26 employee is considered "on duty" and the meal period is counted as time worked under the
27 applicable Wage Orders.
28

1 83. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer who
2 fails to provide or make available a required meal period must, as compensation, pay the employee
3 one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
4 period was not authorized and permitted.

5 84. Despite these requirements, Defendants have knowingly and willfully refused to
6 perform their obligations to provide and make available to Plaintiff and putative Class members the
7 ability to take the meal periods to which they are entitled. Plaintiff entirely missed many meal
8 periods during his employment and receives his meal period after the fifth hour of work nearly
9 every day he works.

10 85. Defendants have also failed to pay Plaintiff and putative Class members one (1) hour
11 of pay for each day an off-duty meal period was denied. Defendants' conduct described herein
12 violates Cal. Lab. Code §§ 226.7 and 512. Therefore, pursuant to Cal. Lab. Code § 226.7(b),
13 Plaintiff and putative Class members are entitled to compensation for the failure to provide or make
14 available meal periods, plus interest, attorneys' fees, expenses, and costs of suit.

15 86. As a proximate result of the aforementioned violations, Plaintiff and putative Class
16 members have been damaged in an amount according to proof at time of trial.

17 87. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

18 **FIFTH CAUSE OF ACTION**
19 **Failure to Authorize and Permit Rest Periods**
 Pursuant to Cal. Lab. Code §§ 226.7
 (On Behalf of Class)

20 88. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
21 herein.

22 89. Defendants routinely fail to authorize and permit rest periods to Plaintiff and Putative
23 Class members.

24 90. Plaintiff's and Putative Class members' schedules regularly prevent them from taking
25 rest periods throughout the day. Plaintiff and Putative Class members do not receive the requisite
26 premium pay for their missed rest periods as required by California law.

27 91. Cal. Lab. Code §§ 226.7 and the applicable Wage Order also require employers to
28

1 authorize and permit employees to take ten (10) minutes of net rest time per (4) four hours or major
2 fraction thereof of work, and to pay employees their full wages during those rest periods. Unless
3 the employee is relieved of all duty during the rest period, the rest period is considered “on duty”
4 and does not qualify as a rest period under the applicable Wage Order.

5 92. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer who
6 fails to authorize and permit a required rest period must, as compensation, pay the employee one
7 (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period
8 was not authorized and permitted.

9 93. Despite these requirements, Defendants have knowingly and willfully refused to
10 perform their obligations to authorize and permit Plaintiff and Putative Class members the ability
11 to take the rest periods to which they are entitled. Plaintiff misses his rest period nearly every day
12 he works due not being authorized by supervisors and leads to leave the line unattended.

13 94. Defendants have also failed to pay Plaintiff and Putative Class members one (1) hour
14 of pay for each day an off-duty rest period was denied. Defendants’ conduct described herein
15 violates Cal. Lab. Code §§ 226.7. Therefore, pursuant to Cal. Lab. Code § 226.7(b), Plaintiff and
16 Putative Class members are entitled to compensation for the failure to authorize and permit rest
17 periods, plus interest, attorneys’ fees, expenses and costs of suit.

18 95. As a proximate result of the aforementioned violations, Plaintiff and Putative Class
19 members have been damaged in an amount according to proof at time of trial.

20 Wherefore, Plaintiff and the Putative Class request relief as hereinafter provided.

21 **SIXTH CAUSE OF ACTION**
22 **Failure to Provide Accurate Itemized Wage Statements**
Pursuant to Cal. Lab. Code § 226
(On Behalf of the Class)

23 96. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
24 herein.

25 97. Defendants do not provide Plaintiff and putative Class members with accurate
26 itemized wage statements as required by California law.

27 98. Cal. Lab. Code § 226(a) provides that:

28 Every employer shall, semimonthly or at the time of each payment of wages, furnish

each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

99. The IWC Wage Orders also establish this requirement. (*See* IWC Wage Orders 1-2001(7), 7-2001(7), and 8-2001(7).)

100. Cal. Lab. Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and reasonable attorney's fees.

101. Defendants do not provide timely, accurate itemized wage statements to Plaintiff and putative Class members in accordance with Cal. Lab. Code § 226(a) and the IWC Wage Orders. The wage statements Defendants provide their employees, including Plaintiff and putative Class members, do not accurately reflect all hours actually worked, actual gross wages earned and/or actual net wages earned, including minimum wages and overtime. In addition, the wage statements Defendants provide do not include premium pay for missed rest periods, first, and/or second meal periods.

102. Defendants are liable to Plaintiff and the putative Class members for the amounts described above in addition to the civil penalties set forth below, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below, pursuant to Cal. Lab. Code § 226(e).

103. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

SEVENTH CAUSE OF ACTION
Waiting Time Penalties
Pursuant to Cal. Lab. Code §§ 201-203
(On Behalf of the Class)

104. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

105. Defendants do not provide Class Members with their wages when due under California law after their employment with Defendants ends.

106. Cal. Lab. Code § 201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

107. Cal. Lab. Code § 202 provides:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

108. Cal. Lab. Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

109. Some of the putative Class members left their employment with Defendants during the statutory period, at which time Defendants owed them unpaid wages. These earned, but unpaid, wages derive from time spent working for the benefit of Defendants during missed or interrupted meal periods, rest periods, and/or missed second meal periods.

110. Defendants willfully refuse and continue to refuse to pay Plaintiff and putative Class members all the wages that are due and owing to them for the work performed and the resulting premium payments for missed or interrupted meal periods, rest periods, and/or missed second meal periods, upon the end of their employment. As a result of Defendant's actions, Plaintiff and Class Members have suffered and continue to suffer substantial losses, including lost earnings, and

1 interest.

2 111. Defendants' willful failure to pay Plaintiff and putative Class members the wages
3 due and owing them constitutes a violation of Cal. Lab. Code §§ 201-202. As a result, Defendants
4 are liable to Plaintiff and proposed Class members for all penalties owing pursuant to Cal. Lab.
5 Code §§ 201-203.

6 112. In addition, addition, Cal. Lab. Code § 203 provides that an employee's wages will
7 continue as a penalty up to thirty days from the time the wages were due. Therefore, the Plaintiff
8 and putative Class members are entitled to penalties pursuant to Cal. Lab. Code § 203, plus interest.

9 113. Wherefore, Plaintiff and putative Class members request relief as hereinafter
10 provided.

11 **EIGHTH CAUSE OF ACTION**
12 **Failure to Reimburse for Necessary Business Expenditures**
13 **Pursuant to Labor Code § 2802**
14 **(On Behalf of the Class)**

15 114. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
16 forth herein.

17 115. Labor Code § 2802 provides, in relevant part:

18 An employer shall indemnify his or her employee for all necessary expenditures or
19 losses incurred by the employee in direct consequence of the discharge of his or her
20 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful. ... For the purposes of this section, the term "necessary expenditures or
losses" shall include all reasonable costs, including, but not limited to, attorney's fees
incurred by the employee enforcing the rights granted by this section.

21 116. Defendants fail to provide Plaintiffs and Class members reimbursement for all
22 necessary expenditures or losses incurred by Plaintiff and putative Class members in direct
23 consequence of the discharge of their duties, or as a result of their obedience to the directions of
24 Defendants. Defendants regularly require Plaintiff and putative Class members to pay out-of-pocket
25 expenses necessary to perform their daily work assignments. For example, Plaintiff is required to
26 use his personal cellphone to notify leads and supervisors of any needed machine maintenance and
27 issues with the manufacturing line. Plaintiff is also required to provide their own tools in order to
28 perform maintenance work on manufacturing machinery when needed.

117. Defendants are liable to Plaintiff and putative Class members for the unreimbursed expenses and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

118. As a proximate result of the aforementioned violations, Plaintiff and the putative Class have been damaged in an amount according to proof at time of trial.

119. Wherefore, Plaintiff and putative Class members request relief as hereinafter provided.

NINTH CAUSE OF ACTION
Violation of Cal. Bus. & Prof. Code §§ 17200, et seq
(On Behalf of the Class)

120. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

121. The UCL prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

122. Cal. Bus. & Prof. Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

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

124. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described in this Complaint, including, but not limited to:

- a. violations of Cal. Lab. Code § 1194 and IWC Wage Orders 1-2001, 7-2001, and 8-2001 pertaining to payment of wages, including minimum wage, for all hours worked;
- b. violations of Cal. Lab. Code § 510 and IWC Wage Orders 1-2001, 7-2001, and 8-

2001 pertaining to overtime;

c. violations of Cal. Lab. Code §§ 226.7 and 512 and Wage Orders 1-2001, 7-2001, and 8-2001 pertaining to meal and rest periods;

d. violations of Cal. Lab. Code § 226 regarding accurate, timely itemized wage statements;

e. violations of Cal. Lab. Code §§ 201-203 pertaining to payment of all wages owed during employment and following separation from employment;

f. violations of Labor Code § 2802 pertaining to reimbursement of business expenditures; and

g. violations of Labor Code §§ 201-203.

125. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages, serve as unlawful predicate acts and practices for purposes of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

126. The acts and practices described above constitute unfair, unlawful, and fraudulent business practices, and unfair competition, within the meaning of Cal. Bus. & Prof. §§ 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff and the Class wages rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

127. Cal. Bus. & Prof. Code § 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants from repeating the unlawful, unfair, and fraudulent business acts and practices alleged above.

128. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and putative Class members have suffered a loss of money and property, in the form of unpaid wages, which are due and payable.

129. Cal. Bus. & Prof. Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition.

1 Plaintiff and putative Class members are entitled to restitution pursuant to Cal. Bus. & Prof. Code
2 § 17203 for all wages and payments unlawfully withheld from employees during the four-year
3 period prior to the filing of this Complaint. Plaintiff's success in this action will enforce important
4 rights affecting the public interest and, in that regard, Plaintiff sues on behalf of himself as well as
5 others similarly situated. Plaintiff and putative Class members seek and are entitled to unpaid
6 wages, declaratory and injunctive relief, and all other equitable remedies owing to them.

7 130. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.

8 131. There is a financial burden involved in pursuing this action, the action is seeking to
9 vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by
10 forcing him to pay attorneys' fees from any recovery thereof. Attorneys' fees are appropriate
11 pursuant to Cal. Code Civ. Proc. § 1021.5 and otherwise.

12 132. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

13 **TENTH CAUSE OF ACTION**
14 **Penalties Pursuant to § 2699(a) of the Private Attorneys General Act**
15 **(Representative Claim on Behalf of the State of California and Aggrieved Employees)**

16 133. Plaintiff realleges and incorporates by reference the foregoing paragraphs as through
17 full set forth herein.

18 134. Under the PAGA, an aggrieved employee may bring a representative action as a
19 private attorney general to recover civil penalties for an employer's violations of the California
20 Labor Code and IWC Wage Orders. These civil penalties are in addition to any other relief available
21 under the California Labor Code and must be allocated 75% to California's Labor and Workforce
22 Development Agency ("LWDA") and 25% to aggrieved employees.

23 135. Labor Code § 2699(a) provides:

24 Notwithstanding any other provision of law, any provision of this code that
25 provides for a civil penalty to be assessed and collected by the Labor and
26 Workforce Development Agency or any of its departments, divisions
27 commissions, boards, agencies or employees, for a violation of this code, may, as
28 an alternative, be recovered through a civil action brought by an aggrieved
employee on behalf of himself or herself and other current or former employees.

1 136. Plaintiff alleges that Defendants' failure to provide timely compensation due for all
2 hours worked by Aggrieved Employees, including minimum wage and overtime, failure to provide
3 timely and compliant meal and rest periods to Aggrieved Employees, failure to provide Aggrieved
4 Employees accurate wage statements, failure to provide Aggrieved Employees full payment of
5 wages upon separation, and failure to reimburse Aggrieved Employees with necessary business
6 expenses - give rise to civil penalties pursuant to the PAGA.

7 137. Plaintiff alleges that Defendants violated the following provisions of the California
8 Labor Code that are actionable through the PAGA: Cal. Lab. Code §§ 201-203, 204, 226, 226.3,
9 226.7, 510, 512, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC Wage Orders.

10 138. Each of these violations entitles Plaintiff to recover the applicable civil penalties as a
11 private attorney general, to be distributed to the State of California and Aggrieved Employees under
12 the PAGA.

13 139. Plaintiff is entitled to civil penalties, to be paid by Defendants and allocated as PAGA
14 requires, pursuant to California Labor Code § 2699(a) for Defendants' violations of the California
15 Labor Code and IWC Wage Orders for which violations a civil penalty is already specifically
16 provided by law.

17 140. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff provided the LWDA and Defendants
18 with notice of his intention to file this claim on December 16, 2022. At least sixty-five calendar
19 days have passed without notice from the LWDA or Defendants. Plaintiff satisfied the
20 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

21 141. Plaintiff seeks the aforementioned penalties, with interest thereon, and an award of
22 attorneys' fees and costs under the PAGA. See Labor Code § 2699(g)(1). Wherefore, Plaintiff
23 requests relief as hereinafter provided.

24 **ELEVENTH CAUSE OF ACTION**
25 **Penalties Pursuant to § 2699(f) of the Private Attorneys General Act**
 (Representative Claim on Behalf of the State of California and Aggrieved Employees)

26 142. Plaintiff realleges and incorporates by reference the foregoing paragraphs as through
27 full set forth herein.
28

1 143. Labor Code § 2699(f) provides:

2 For all provisions of this code except those for which a civil penalty is specifically
3 provided, there is established a civil penalty for a violation of these provisions, as
4 follows: . . . (2) If, at the time of the alleged violation, the person employs one or
5 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
6 employee per pay period for the initial violation and two hundred dollars (\$200) for
7 each aggrieved employee per pay period for each subsequent violation.

8 144. Labor Code § 200 defines wages as “all amounts for labor performed by employees
9 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
10 commission basis or method of calculation.”

11 145. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
12 employment are due and payable twice during each calendar month....”

13 146. IWC Wage Order 1-2001(2)(G), 7-2001(2)(G), and 8-2001(2)(G) defines hours
14 worked as “the time during which an employee is subject to the control of an employer and includes
15 all the time the employee is suffered or permitted to work, whether or not required to do so.”

16 147. Labor Code § 1198 makes it unlawful for employers to employ employees under
17 conditions that violate the Wage Orders.

18 148. Labor Code § 510(a) provides:

19 Eight hours of labor constitutes a day’s work. Any work in excess of
20 eight hours in one workday and any work in excess of 40 hours in any
21 one workweek and the first eight hours worked on the seventh day of
22 work in any one workweek shall be compensated at the rate of no less
23 than one and one-half times the regular rate of pay for an employee.
24 Any work in excess of 12 hours in one day shall be compensated at the
25 rate of no less than twice the regular rate of pay for an employee. In
26 addition, any work in excess of eight hours on any seventh day of a
27 workweek shall be compensated at the rate of no less than twice the
28 regular rate of pay of an employee. Nothing in this section requires an
29 employer to combine more than one rate of overtime compensation in
30 order to calculate the amount to be paid to an employee for any hour of
31 overtime work.

32 149. Labor Code § 1197 provides:

33 The minimum wage for employees fixed by the commission or by any
34 applicable state or local law, is the minimum wage to be paid to
35 employees, and the payment of a lower wage than the minimum so
36 fixed is unlawful. This section does not change the applicability of local
37 minimum wage laws to any entity.

1 150. Labor Code § 1194 provides, in relevant part:

2 Notwithstanding any agreement to work for a lesser wage, any
3 employee receiving less than the legal minimum wage or the legal
4 overtime compensation applicable to the employee is entitled to
5 recover in a civil action the unpaid balance of the full amount of this
6 minimum wage or overtime compensation, including interest thereon,
7 reasonable attorney's fees, and costs of suit.

8 151. Labor Code §§ 226.7 and 512 and IWC Wage Order 1-2001(2)(G), 7-2001(2)(G),
9 and 8-2001(2)(G) require Defendants to authorize, permit, and/or make available timely and
10 compliant meal and rest periods to its employees. Labor Code §§ 226.7 and 512 and IWC Wage
11 Order 1-2001(2)(G), 7-2001(2)(G), and 8-2001(2)(G) prohibit employers from employing an
12 employee for more than five hours without a meal period of not less than thirty minutes, and from
13 employing an employee more than ten hours per day without providing the employee with a
14 second meal period of not less than thirty minutes. Unless the employee is relieved of all duty
15 during the thirty-minute meal period and ten-minute rest period, the employee is considered "on
16 duty" and the meal period is counted as time worked under the applicable wage orders.

17 152. Defendants' policies and practices result in minimum wage, overtime and double
18 time violations, and meal and rest period violations.

19 153. To the extent than any violation alleged herein does not carry penalties under Labor
20 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each pay period
21 in which Plaintiff and an Aggrieved Employee was aggrieved, in the amounts established by Labor
22 Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff and
23 Aggrieved Employees for violations of Labor Code provisions including, but not limited to, Labor
24 Code 201-203, 204, 226, 226.3, 226.7, 510, 512, 1182.12, 1194, 1197, 1197.1, 1198, IWC Wage
25 Order 1-2001(2)(G), 7-2001(2)(G), and 8-2001(2)(G), and any other violation alleged herein does
26 not carry penalties under Labor Code § 2699(a).

27 154. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 16, 2022, Plaintiff
28 provided the LWDA and Defendants with notice of his intention to file this claim. At least sixty-
29 five calendar days have passed without response from the LWDA or Defendants. Plaintiff satisfied
30 the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

155. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(1).

156. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

157. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the Cal. Lab. Code and Cal. Bus. & Prof. Code;
- b. For a declaratory judgment that Defendants have violated the Cal. Lab. Code, California law, and public policy as alleged herein;
- c. For a declaratory judgment that Defendants have violated Cal. Bus. & Prof. Code §§ 17200, *et seq.*, as a result of the aforementioned violations of the Cal. Lab. Code;
- d. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;
- e. For an order awarding Plaintiff and putative Class members compensatory damages, including lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money, actual damages, treble damages, punitive damages, and all other sums of money owed to Plaintiff and Class members, together with interest on these amounts, according to proof;
- f. For an order awarding civil penalties to the full extent provided by the PAGA;
- g. For an award of reasonable attorneys' fees as provided by the Cal. Lab. Code, including Labor Code § 2699(g)(1) and Cal. Code. Civ. Proc. § 1021.5 and/or other applicable law;
- h. For all costs of suit;
- i. For interest as provided by applicable law; and

1 j. For such other and further relief as this Court deems just and proper.

2

3 Dated: February 22, 2023

Respectfully Submitted,

4

A handwritten signature in dark ink, appearing to read 'D. Leimbach', is written over a horizontal line.

5

David C. Leimbach

6

Andrew D. Weaver

7

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

8

Attorneys for Plaintiff and the Putative Class

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Dated: February 22, 2023

Respectfully Submitted,



David C. Leimbach
Andrew D. Weaver
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiff and the Putative Class

1 **PROOF OF SERVICE**

2 I, Elisa I. Guevara, declare the following:

3 I am over the age of eighteen years and not a party to the within entitled action. I am
4 employed at Schneider Wallace Cottrell Konecky LLP located at 300 S. Grand Ave, Suite 2700
5 Los Angeles, California 90071.

6 On February 22, 2023, I served the following document(s) described as:

7 • **FIRST AMENDED CLASS AND PAGA COMPLAINT**

8 on the following interested party(s):

9 David G. Hagopian
10 dhagopian@cdf litigation.com

11 Garrett V. Jensen
12 gjensen@cdf laborlaw.com

13 Robyn E. Frick
14 rfrick@cdf laborlaw.com

15 **CDF LABOR LAW LLP**

16 18300 Von Karman Avenue, Suite 800

17 Irvine, CA 92612

18 Telephone: (949) 622-1661

19 ***Attorneys for Defendants***

20 **[✓] BY ELECTRONIC SERVICE** by electronically mailing a true and correct copy in PDF
21 format through OneLegal electronic system to the email address(es) set forth above.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct. Executed February 22, 2023, at Santa Ana, California.

24 

25 Elisa I. Guevara

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Elisa I. Guevara, declare the following:

I am over the age of eighteen years and not a party to the within entitled action. I am employed at Schneider Wallace Cottrell Konecky LLP located at 300 S. Grand Ave, Suite 2700; Los Angeles, California 90071.

On February 22, 2023, I served the following document(s) described as:

- **FIRST AMENDED CLASS AND PAGA COMPLAINT**

on the following interested party(s):

PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAFilings@dir.ca.gov

☒ **BY ELECTRONIC FILING AND SERVICE** by electronically submitting true and correct copies in PDF format of the documents described above to the State of California Labor and Workforce Development Agency / Department of Industrial Relations via the electronic filing system filed under case number LWDA-CM-924900-22 located at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> .

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed February 22, 2023, at Santa Ana, California.


Elisa I. Guevara