

FILED
SUPERIOR COURT

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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

STK-CV- VOE 2023- 4230

RENATO FLORES, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

RICH HOLDINGS, INC., a Delaware
Corporation; RICH PRODUCTS
CORPORATION, a Delaware
Corporation; and DOES 1-50, inclusive,
Defendants.

REPRESENTATIVE ACTION
COMPLAINT

Assigned for All Purposes To:
Hon.
Dept.:

COMPLAINT FOR:

**Civil Penalties Under Private Attorneys'
General Act, Labor Code Section 2698 *et*
*seq.***

COMES NOW, Plaintiff RENATO FLORES (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against Defendants RICH HOLDINGS, INC., a Delaware Corporation; RICH PRODUCTS CORPORATION, a Delaware Corporation; and DOES 1-50, inclusive (collectively “Defendants” or “Rich Holdings”) as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys’ General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf of all non-exempt employees working directly or indirectly for Defendants in the State of California (the “Aggrieved Employees” or “Non-Exempt Employees”) from one year prior to the filing of the PAGA notice to the conclusion of this action.

3. Plaintiff brings this action on behalf of himself and the Aggrieved Employees to recover civil penalties and address Defendants’ violations of the California Labor Code and the IWC Wage Orders.

4. Pursuant to *Huff v. Securitas Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state of violations affecting all the aggrieved employees working for Defendants, regardless of their classification, job title, or locations in California.

5. Defendants implemented uniform policies and practices that deprived Plaintiff and Aggrieved Employees of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

6. Such actions and policies, as described above and further herein, were and continue

1 to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Aggrieved
2 Employees, bring this action pursuant to the California Labor Code, including sections 201, 202,
3 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194,
4 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of
5 Regulations, Title 8, section 11000 *et seq.*,

6 7. In this case, Defendants violated various provisions of the California Labor Code
7 and IWC Wage Orders. Defendants' violations include: (1) failure to pay minimum wages;
8 (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize
9 and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely
10 pay wages owed upon separation from employment; (7) failure to reimburse necessary expenses;
11 (8) knowing and intentional failure to comply with itemized wage statement provisions; and (9)
12 failure to keep accurate records.

13 8. This action is timely because Plaintiff suffered from a violation or numerous
14 violations of the California Labor Code within one year of the date on which a PAGA notice was
15 sent to the LWDA via online submission. More than 65 days have passed, and no response has
16 been received by the LWDA. Plaintiff thereby satisfied the notice requirement under the statute
17 and is permitted to proceed with this action in a representative capacity.

18
19 **JURISDICTION AND VENUE**

20 9. This Court has jurisdiction over this action pursuant to the California Constitution
21 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
22 those given by statute to other courts.

23 10. Further, there is no federal question at issue, as the issues herein are based solely on
24 California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of
25 Civil Procedure, the California Civil Code, and the California Business and Professions Code.

26 11. Venue is proper in this Court because one or more of the Defendants reside, transact
27 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or
28 omissions alleged herein took place in this County.

1 **PARTIES**

2 12. Defendant Rich Holdings, Inc. is a Delaware corporation, doing business in the state
3 of California. It is based at 1 Robert Rich Way, Buffalo, NY 14213.

4 13. Defendant Rich Products Corporation is a Delaware corporation, doing business in
5 the state of California. It is based at 1 Robert Rich Way, Buffalo, NY 14213.

6 14. Upon information and belief, Defendants employ Non-Exempt Employees, like
7 Plaintiff, throughout the State of California.

8 15. Plaintiff Renato Flores is and during the liability period has been, a resident of
9 California.

10 16. Plaintiff was employed in an hourly, non-exempt position by Defendants during the
11 relevant time period.

12 17. Plaintiff and the members of the aggrieved group were employed as hourly paid
13 employees by employed by Defendants, either directly or indirectly, in the State of California at
14 any time from one year prior to the filing of the PAGA notice to the conclusion of this action.

15 18. Whenever in this complaint reference is made to any act, deed, or conduct of
16 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
17 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
18 actively engaged in the management, direction, control, or transaction of the ordinary business and
19 affairs of Defendants.

20 19. The true names and capacities of Defendants, whether individual, corporate,
21 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
22 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
23 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
24 capacities of the Defendants designated hereinafter as DOES when such identities become known.

25 20. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
26 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
27 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
28 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits

1 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
2 liability of the Defendants as alleged herein.

3 21. Plaintiff is further informed and believes, and thereon allege, that at all times
4 material herein, each Defendant was completely dominated and controlled by its co-Defendants
5 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
6 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
7 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
8 Whenever and wherever reference is made to individuals who are not named as Defendants in this
9 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
10 acted on behalf of Defendants named in this complaint within the scope of their respective
11 employments.

12 **FACTUAL ALLEGATIONS**

13 22. During the relevant time frame, Defendants compensated Plaintiff and the Non-
14 Exempt Employees based upon an hourly wage.

15 23. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto,
16 have been non-exempt employees within the meaning of the California Labor Code, and the
17 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
18 protections of the IWC Wage Orders and the Labor Code.

19 24. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-
20 exempt position. He worked as a Frozen Dough Lead in Defendants' facilities approximately 6
21 days per week, 50+ hours per week.

22 25. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
23 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
24 requirements of California's wage and employment laws.

25 26. All Aggrieved Employees are similarly situated in that they are all subject to
26 Defendants' uniform policies and systemic practices as specified herein.

27 27. Plaintiff and the Aggrieved Employees were required to clock in at the beginning of
28 their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their shifts.
However, Plaintiff and the Aggrieved Employees were not paid for all hours worked because

employees were required to work off the clock.

28. By way of example only, Plaintiff and the Aggrieved Employees were required to go through COVID-19 screenings prior to starting their shifts.

29. By way of further example, Plaintiff and, upon information and belief, the Aggrieved Employees were regularly required to complete other work-related activities pre-shift before clocking in and post-shift after clocking out. For instance, Plaintiff and the Aggrieved Employees were required to and engage in work-related communications while off the clock, using their personal cellular phones.

30. In addition, Plaintiff and the Aggrieved Employees worked in excess of eight (8) hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate of time and one-half the employee's regular rate of pay per hour.

31. Upon information and belief, Defendants failed to incorporate all forms of non-discretionary compensation into the regular rate, including differentials, bonuses, and incentives.

32. Plaintiff and the Aggrieved Employees were regularly required to work shifts in excess of five hours without being provided a lawful meal period and, on occasion, over ten hours in a day without being provided a second lawful meal period as required by law.

33. Indeed, during the relevant time, as a consequence of Defendants' scheduling practices, work demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute meal periods as required by law. Not only were Plaintiff's and the Aggrieved Employees' first meal breaks frequently not provided, untimely or short, but also Plaintiff and the Aggrieved Employees were not provided a second meal period when working shifts in excess of 10 hours.

34. On information and belief, Plaintiff and Aggrieved Employees did not waive their rights to a second meal period.

35. Despite the above-mentioned meal period violations, Defendants failed to compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees, one additional hour of pay at their regular rate as required by California law when meal periods were not timely or lawfully provided in a compliant manner.

36. Plaintiff is informed and believes, and thereon alleges, that Defendants know, should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving

1 accurately calculated compensation.

2 37. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
3 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
4 period for every four hours worked or major fraction thereof, which is a violation of the Labor Code
and IWC Wage Orders.

5 38. Plaintiff and the Aggrieved Employees were required to engage in work related
6 activities during meal and rest periods. Meal and rest periods were frequently interrupted as a
7 consequence.

8 39. Plaintiff and the Aggrieved Employees were also required to carry work-related
9 walkie-talkies or other communications devices during meal and rest periods, and were required to
10 remain available. Rest periods were frequently interrupted as a consequence.

11 40. Further, Plaintiff and, upon information and belief, the Aggrieved Employees were
12 not allowed to leave the premises during meal and rest periods.

13 41. Defendants maintained and enforced scheduling practices, policies, and imposed
14 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
15 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
requisite rest periods were not timely authorized and permitted.

16 42. Further, Plaintiff and, upon information and belief, the Aggrieved Employees were
17 not allowed to leave the premises during meal and rest periods.

18 43. Despite the above-mentioned rest period violations, Defendants did not compensate
19 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
20 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
21 applicable IWC Wage Orders, for each day on which lawful rest periods were not authorized and
permitted.

22 44. Plaintiff and the Aggrieved Employees were also required to use their personal
23 cellular phones for work related purposes throughout the working day and off the clock.

24 45. Moreover, Plaintiff and the Aggrieved Employees were required to incur necessary
25 expenses in the discharge of their duties, including without limitation for cell phone expenses and
26 fees for use of pay cards, but were not reimbursed for such necessary expenses.

27 46. Defendants also failed to provide accurate, lawful itemized wage statements to
28

1 Plaintiff and the Aggrieved Employees in part because of the above specified violations.

2 47. Defendants have also made it difficult to determine applicable rates of pay and
3 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
4 exempt Employees, including Plaintiff, during the liability period because they did not implement
5 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
6 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
7 211(c), California Labor Code section 226, and applicable California Wage Orders.

8 48. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
10 thereof for resignations without prior notice as the case may be) they had a duty to accurately
11 compensate Plaintiff and Aggrieved Employees for all wages owed including straight time,
12 overtime, meal and rest period premiums, and that Defendants had the financial ability to pay such
13 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
14 because of the above-specified violations.

15 49. Plaintiff and the Aggrieved Employees are covered by applicable California IWC
16 Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title
17 8, section 11000 *et seq.*

18 a.

19 *FAILURE TO PAY MINIMUM WAGES*

20 50. Plaintiff incorporates each and every allegation set forth in all of the foregoing
21 paragraphs as if fully set forth herein.

22 51. Labor Code section 204 establishes the fundamental right of all employees in the
23 State of California to be paid wages, including minimum wage, straight time and overtime, in a
24 timely fashion for their work.

25 52. Labor Code section 1194(a) provides that notwithstanding any agreement to work
26 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
27 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
28 of the full amount of this minimum wage or overtime compensation, including interest thereon,

1 reasonable attorney's fees, and costs of suit.

2 53. Labor Code section 1197 provides: The minimum wage for employees fixed by the
3 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
4 and the payment of a lower wage than the minimum so fixed is unlawful.

5 54. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
6 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
7 Wage Order(s).

8 55. The applicable Wage Orders and California Labor Code sections 1197 and 1182.12
9 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
10 state law.

11 56. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
12 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
13 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
14 equal to the unpaid wages and interest accrued thereon.

15 57. During all relevant periods, the California Labor Code and Wage Orders required
16 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
17 for all hours worked.

18 58. The IWC Wage Orders define "hours worked" as "the time during which an
19 employee is subject to the control of an employer, and includes all the time the employee is suffered
20 or permitted to work, whether or not required to do so."

21 59. Plaintiff and the Aggrieved Employees were required to clock in at the beginning of
22 their shifts and out at the end. However, Plaintiff and the Aggrieved Employees were not paid for
23 all hours worked because employees were required to work off the clock. By way of example only,
24 Plaintiff and Aggrieved Employees were required to perform pre/post activities off the clock,
25 including but not limited to COVID-19 screenings and work-related communications on their
26 personal cellular phones.

27 60. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
28 Aggrieved Employees were working off the clock and that they should have been paid for this time.

1 61. Defendant's policy and practice of not paying all minimum wages violates
2 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
3 applicable Wage Order 1-2001.

4
5 *FAILURE TO PAY OVERTIME OWED*

6 62. Plaintiff incorporates each and every allegation set forth in all of the foregoing
7 paragraphs as if fully set forth herein.

8 63. During all relevant periods, Defendant required Plaintiff and the Aggrieved
9 Employees to work shifts and/or remain on call in excess of eight (8) hours per workday and/or to
10 work in excess of forty (40) hours per workweek.

11 64. During all relevant periods, both the California Labor Code sections 1194, 1197,
12 510, 1198, and the pertinent Wage Order 1-2001 required that all work performed by an employee
13 in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in
14 excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the
15 employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required
16 to be compensated at the rate of no less than twice the regular rate of pay for an employee. In
17 addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required
18 to be compensated at the rate of no less than twice the regular rate of pay of an employee.

19 65. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff
20 and the Aggrieved Employees to work and/or remain on call in excess of eight (8) hours in a
21 workday and/or in excess of forty (40) hours in a workweek without compensating them at a rate
22 of one and one-half (1.5) times their regular rate of pay.

23 66. The IWC Wage Orders define "hours worked" as "the time during which an
24 employee is subject to the control of an employer, and includes all the time the employee is suffered
25 or permitted to work, whether or not required to do so.

26 67. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours
27 for which they were not paid because Plaintiff and the Aggrieved Employees were required to work
28 off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess of

forty (40) hours in a workweek and should have been paid at the overtime rate.

68. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Aggrieved Employees were working off the clock and that they should have been paid for this time.

69. In addition, upon information and belief, Defendants failed to incorporate all forms of compensation, including without limitation bonuses, differentials, and incentives, into the regular rate for overtime purposes.

70. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees earned overtime wages and such employees suffered damages as a result.

71. Defendants knew or should have known Plaintiff and the Aggrieved Employees were undercompensated as a result of these practices.

72. Defendant's policy and practice of not paying all overtime wages violates California Labor Code sections 204, 210, 216, 510, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Order 1-2001.

FAILURE TO PROVIDE LAWFUL MEAL PERIODS

73. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

74. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

75. During the relevant time, Defendants failed to provide Plaintiff and Aggrieved Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

76. As a consequence of Defendants' policies and practices, requirements, demands, coverage and staffing, Plaintiff and the Aggrieved Employees were often required to forego such meal periods, take shortened meal periods, and/or commence their meal periods into and beyond the sixth hour of their shifts.

1 77. Upon information and belief, Plaintiff and the Aggrieved Employees were not paid
2 one hour of pay at their regular rate for each day that a meal period was not lawfully provided.

3 78. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved
4 Employees have been damaged in an amount according to proof at time of trial.

5 79. Pursuant to Labor Code § 226.7, Plaintiff and Aggrieved Employees are entitled to
6 recover one (1) hour of premium pay for each day in which a meal period violation occurred. They
7 are also entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

8 80. As a result of the unlawful acts of Defendants, Defendants violated Labor Code
9 sections 512, 226.7, 1198, and the Wage Orders.

10 *FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS*

11 81. Plaintiff incorporates by reference and realleges each and every allegation contained
12 above, as though fully set forth herein.

13 82. Pursuant to the IWC Wage Orders applicable to Plaintiff's and Aggrieved
14 Employees' employment by Defendants, "Every employer shall authorize and permit all employees
15 to take rest periods, which insofar as practicable shall be in the middle of each work period....
16 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten
17 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
18 period time shall be counted as hours worked, for which there shall be no deduction from wages."

19 83. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
20 during any rest period mandated by an applicable order of the IWC.

21 84. Defendants were required to authorize and permit employees such as Plaintiff and
22 Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the total
23 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction
24 thereof, with no deduction from wages.

25 85. Despite said requirements of the IWC Wage Orders applicable to Plaintiff's and
26 Class Member's employment with Defendants, Defendants failed and refused to authorize and
27 permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for every
28

four (4) hours worked, or major fraction thereof. Such rest breaks, when provided, were frequently untimely or less than net ten minutes because of the work requirements imposed by Defendants.

86. Further, Plaintiff and, upon information and belief, the Aggrieved Employees were not allowed to leave the premises during rest periods.

87. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay for each day that a rest period violation occurred. On information and belief, the other members of the Class endured similar violations as a result of Defendants' rest period policies and practices and Defendant did not pay said Aggrieved Employees premium pay as required by law.

88. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

89. As a result of the unlawful acts of Defendants, Defendants violated Labor Code section 226.7, 512, 1198, and the Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING EMPLOYMENT

90. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

91. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

92. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

93. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

1 94. Labor Code section 210 (a) provides that “In addition to, and entirely independent
2 and apart from, any other penalty provided in this article, every person who fails to pay the wages
3 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
4 1197.5, shall be subject to a penalty as follow:

5 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
6 employee.

7 (2) For each subsequent violation, or any willful or intentional violation, two hundred
8 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
9 unlawfully withheld.

10 95. Plaintiff and the Aggrieved Group are entitled to civil penalties, attorneys fees, and
11 costs.

12 *FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION*

13 96. Plaintiff incorporates by reference and realleges each and every allegation contained
14 above, as though fully set forth herein.

15 97. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
16 due within seventy-two (72) hours of separation of employment.

17 98. Section 203 of the Labor Code provides that if an employer willfully fails to timely
18 pay such wages the employer must, as a penalty, continue to pay the subject employee’s wages
19 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30
20 days of wages.

21 99. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of
22 wages earned, including but not limited to minimum wages, overtime, and premium meal and rest
23 period compensation, but to date have not received such compensation, therefore entitling them to
24 Labor Code § 203 penalties.

25 100. In addition, irrespective of any derivative violation, Defendants failed to timely pay
26 Plaintiff and, upon information and belief, other Aggrieved Employees earned compensation at the
27 time of termination despite their obligations under Labor Code 201 and 202.

28 101. More than thirty (30) days have passed since affected Aggrieved Employees have

1 left Defendants' employ, and on information and belief, they have not received payment pursuant
2 to Labor Code § 203.

3 102. Plaintiff and the affected Aggrieved Employees are thus entitled to 30 days' wages
4 as a penalty under Labor Code § 203.

5 103. Defendants' conduct violates Labor Code section 201-203.

6 *FAILURE TO REIMBURSE NECESSARY EXPENSES*

7 104. Plaintiff incorporates by reference and realleges each and every allegation contained
8 above, as though fully set forth herein.

9 105. Plaintiff repeats and incorporates herein by reference each and every allegation set
10 forth above, as though fully set forth herein.

11 106. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
12 Employees for necessary expenditures incurred in direct consequence of the discharge of his or her
13 duties.

14 107. Plaintiff and the members of the Aggrieved Group were required to incur expenses
15 in the performance of their assigned job duties, including but not limited to personal cell phone
16 expenses and pay card fees.

17 108. Upon information and belief, the Defendants did not reimburse Plaintiff or the
18 Aggrieved Group for such expenses.

19 109. As a result of the unlawful acts of Defendants, Defendants violated Labor Code
20 §2800 and 2802.

21 *KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE*
22 *WAGE STATEMENT PROVISIONS*

23 110. Plaintiff repeats and incorporates herein by reference each and every allegation set
24 forth above, as though fully set forth herein.

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

1 (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net
2 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
3 the employee and only the last four digits of his or her social security number or an employee
4 identification number other than a social security number, (8) the name and address of the legal
5 entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period
6 and the corresponding number of hours worked at each hourly rate by the employee....”.

7 112. Further, the IWC Wage Orders require in pertinent part: Every employer shall keep
8 accurate information with respect to each employee including the following: (3) Time records
9 showing when the employee begins and ends each work period. Meal periods, split shift intervals,
10 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
11 and applicable rates of pay....”

12 113. Labor Code section 1174 of the California also requires Defendants to maintain and
13 preserve, in a centralized location, among other items, records showing the names and addresses of
14 all employees employed and payroll records showing the hours worked daily by, and the wages
15 paid to, its employees. On information and belief and based thereon, Defendants have knowingly
16 and intentionally failed to comply with Labor Code section 1174, including by implementing the
17 policies and procedures and committing the violations alleged in the preceding causes of action and
18 herein. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor
19 Code section 1175.

20 114. Defendants have failed to record many of the items delineated in applicable
21 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
22 including by virtue of the fact that each wage statement which failed to accurately compensate
23 Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and
24 rest periods, or which failed to include compensation for all minimum wages earned or overtime
25 hours worked, was an inaccurate wage statement. In addition, the wage statements inaccurately
26 stated totals hours worked and hours worked at each hourly wage rate.

27 115. On information and belief, Defendants failed to implement and preserve a lawful
28 record-keeping method to record all non-provided meal and rest periods owed to employees or all

1 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
2 and applicable California Wage Orders. In order to determine if they had been paid the correct
3 amount and rate for all hours worked, Plaintiff and Aggrieved Employees have been, would have
4 been, and are compelled to try to discover the required information missing from their wage
5 statements and to perform complex calculations in light of the inaccuracies and incompleteness of
6 the wage statements Defendants provided to them.

7 116. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
8 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
9 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
10 required information. Here, Plaintiff asserts the Defendant omitted required information, failed to
11 accurately include all applicable hourly rates on the wage statements and the corresponding number
12 of hours worked at such rates or hours paid at such rates. In addition, Defendants have failed to
13 provide accurate itemized wage statements as a consequence of the above-specified violations for
14 failure to accurately pay all wages owed, accurately record all hours worked, and failure to pay
15 meal and rest period premiums as required by law.

16 117. Moreover, upon information and belief, as a pattern and practice, in violation of
17 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
18 accurate records pertaining to the total hours worked for Defendants by the members of the
19 Aggrieved Group, including but not limited to, beginning and ending of each work period, meal
20 period and split shift interval, the total daily hours worked, and the total hours worked per pay
21 period and applicable rates of pay.

22
23 *FAILURE TO KEEP ACCURATE RECORDS*

24 118. Plaintiff repeats and incorporates herein by reference each and every allegation set
25 forth above, as though fully set forth herein.

26 119. The IWC Wage Orders, Labor Code Sections 226(a), 1174, and 1174.5 require that
27 the Defendant keep accurate payroll and timekeeping information.
28

1 120. The IWC Wage Orders required in pertinent part: Every employer shall keep
2 accurate information with respect to each employee including the following: (3) Time records
3 showing when the employee begins and ends each work period. Meal Periods, split shift intervals,
4 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
5 and applicable rate of pay...”

6 121. Labor Code section 1174 also requires Defendants to maintain and preserve, in a
7 centralized location, among other items, records showing the names and addresses of all employees
8 employed and payroll records showing the hours worked daily by and the wages paid to, its
9 employees.

10 122. On information and belief and based thereon, Defendants have knowingly and
11 intentionally failed to comply with Labor code section 1174, including by implementing the
12 policies and procedures and committing the violations alleged above, including without limitation
13 failing to keep records of meal periods and all wages earned at the proper rates.

14 123. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant
15 to Labor Code section 1175.

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **PENALTIES UNDER THE PRIVATE ATTORNEYS’ GENERAL ACT, LABOR CODE**

19 **SECTION 2698 ET SEQ.**

20 124. Plaintiff incorporates by reference each and every paragraph above, and realleges
21 each and every allegation contained above as though fully set forth herein.

22 125. Plaintiff gave timely written notice by online submission to the LWDA and by
23 certified mail to Defendants of Defendants’ violations of numerous provisions of the California
24 Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required
25 by statute.

26 126. Plaintiff is an “aggrieved employee” as defined in Labor Code Section 2699(A), as
27 he was employed by Defendants during the statutory period and suffered one or more of the Labor
28 Code violations set forth herein. He seeks to recover of himself and all other current and former

1 aggrieved employees of Defendants the civil penalties provided by PAGA, plus reasonable
2 attorneys' fees and costs.

3 127. 65 days have passed, and no response has been received from the LWDA.
4 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

5 128. Plaintiff has exhausted all administrative procedures required of them under the
6 Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing
7 forward this cause of action.

8 129. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties for
9 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint.

10 130. Plaintiff seeks to recover the PAGA civil penalties through a representative action
11 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
12 4th 969. Class certification of the PAGA claims is not required.

13 131. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover
14 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
15 violations as set forth in this Complaint.

16 132. Specifically, and without limitation, Plaintiff, on behalf of himself and the
17 Aggrieved Employees, seek penalties under Labor Code §2699, for the claims set forth
18 hereinabove, including without limitation:

- 19 a. Defendants' failure to comply with the requirement of Labor Code §1182.12,
20 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
21 hour worked;
- 22 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
23 1197, 1198, and Wage Orders to accurately pay all wages earned, including
24 overtime;
- 25 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
26 wages after demand was made;

- d. Defendants' failure to comply with the requirement of Labor Code §§204 and 210 to pay, without condition and within the time set by the applicable article, all wages, or parts thereof;
- e. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay wages due;
- f. Defendants' failure to comply with the requirement of Labor Code §§201 and 202 to pay wages due to former employees;
- g. Defendants' failure to pay waiting time penalties to former employees pursuant to Labor Code section 203;
- h. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-duty meal periods;
- i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- k. Defendants' failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each statutorily required rest break that was not lawfully authorized and permitted;
- l. Defendants' failure to reimburse necessary expenses in violation of Labor Code § 2802;
- m. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- n. Defendants' failure to maintain required records in violation of Labor Code §226, 1174, and Wage Orders;

1 133. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for
2 which a civil penalty is specifically provided, including but not limited to the following:

- 3 a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are
4 subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial
5 violation for each failure to pay each employee and two hundred (\$200) per
6 employee for violations in subsequent pay periods plus 25% of the amount
7 unlawfully withheld.
- 8 b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendants
9 are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
10 per aggrieved employee for the initial pay period where a violation occurs and one
11 thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay
12 period.
- 13 c. Pursuant to Labor Code §558(a), "[a]ny employer or other person acting on behalf
14 of an employer who violated, or causes to be violated, a section of this chapter or
15 any provisions regulating hours and days of work in any order of the Industrial
16 Welfare Commission," including Labor Code §§510 and 512, shall be subject to a
17 civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50)
18 for initial violations for each underpaid employee for each pay period for which the
19 employee was underpaid and one hundred dollars (\$100) for each subsequent
20 violation for each underpaid employee for each pay period for which the employee
21 was underpaid.
- 22 d. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d), Defendants
23 are subject to a civil penalty of five hundred dollars (\$500).
- 24 e. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any
25 employee a wage less than the minimum fixed by an order of the commission, shall
26 be subject to a civil penalty as follows: for any initial violation that is intentionally
27 committed, one hundred dollars (\$100) for each underpaid employee for each pay
28 period for which the employee is underpaid; and for each subsequent violation of

1 the same offense, two hundred fifty dollars (\$250) for each underpaid employee for
2 each pay period for which the employee is underpaid regardless of whether the
3 initial violation was intentionally committed.

4 134. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under
5 Labor Code §§2698 et seq. and 2699 because of Defendants' violation of numerous provisions of
6 the California Labor Code and IWC Wage Orders.

7 135. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100
8 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions
9 of the California Labor Code.

10 136. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
11 twenty-five percent (25%) of all penalties due under California Law, interest, attorneys' fees and
12 costs.

13 137. Under Labor Code §2699, the State of California should be awarded seventy-five
14 percent (75%) of the penalties due under California Law.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff pray judgment against Defendants, jointly and severally, as
17 follows:

- 18 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the
19 violations specified above;
- 20 2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and
21 (f);
- 22 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California
23 Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-
24 judgment interest;
- 25 4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226,
26 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions
27 providing for attorneys' fees and costs; and

28 ///

1 5. For such other and further relief as the Court deems proper.
2
3

4 Respectfully submitted,
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6
7 Dated April 25, 2023



8 JAMES HAWKINS, APLC
9 James R. Hawkins, Esq.
10 Christina M. Lucio, Esq.

11 Attorneys for RENATO FLORES, on behalf of himself
12 and all others similarly situated
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