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Superior Court of California
County of Santa Barbara
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA—NORTH COUNTY**

ELIAS TALAMANTES, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees,

Plaintiff,

vs.

PACIFIC PETROLEUM CALIFORNIA,
INC., a California corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No. 23CV02081

**CLASS ACTION COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code
§§ 510, 1194, and 1198 (Failure to Pay
Regular and Overtime Wages);
- (2) Violation of California Labor Code
§§ 510, 1771, 1774, 1194, 1811, and 1815
(Failure to Pay Prevailing Wages on
Public Works Projects);
- (3) Violation of California Labor Code
§§ 226.7 and 512(a) (Failure to Provide
Compliant Meal Periods or Pay Premium
Compensation in Lieu Thereof);
- (4) Violation of California Labor Code
§ 226.7 (Failure to Provide Compliant
Rest Periods or Pay Premium
Compensation in Lieu Thereof);

- (5) Violation of California Labor Code §§ 201 – 203 (Failure to Pay Wages Timely Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Pay Wages Timely During Employment);
- (7) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements);
- (8) Violation of California Business & Professions Code §§ 17200, *et seq.*; and
- (9) Penalties pursuant to California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act).

JURY TRIAL DEMANDED

Plaintiff ELIAS TALAMANTES, individually and on behalf of all other members of the public similarly situated and as an aggrieved employee pursuant to the Private Attorneys General Act, alleges as follows:

THE PARTIES

1. Plaintiff ELIAS TALAMANTES (“Plaintiff”) is at least 18 years of age and a resident of the County of Santa Barbara in the State of California.

2. Defendant PACIFIC PETROLEUM CALIFORNIA, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and in the State of California.

3. Plaintiff is unaware of the true names or capacities of defendants sued herein under the fictitious names DOES 1 through 10, but prays for leave to amend and serve such fictitiously named defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities become known.

1 belief, each party is either a citizen of California, has sufficient minimum contacts in California, or
2 otherwise intentionally avails itself of the California market so as to render the exercise of
3 jurisdiction over it by the California courts consistent with traditional notions of fair play and
4 substantial justice.

5 11. Venue is proper in this Court because, upon information and belief, one or more of
6 the named Defendants reside, transact business, or have offices in this county and the acts and
7 omissions alleged herein took place in this county.

8
9 **CLASS ACTION ALLEGATIONS**

10 12. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
11 other persons similarly situated, and thus, seeks class certification under California Code of Civil
12 Procedure § 382.

13 13. All claims alleged herein arise under California law for which Plaintiff seeks relief
14 authorized by California law.

15 14. Plaintiff's proposed class consists of and is defined as:

16 All non-exempt employees who have been employed by
17 Defendants in the State of California within four years prior to
18 the filing of this complaint and the date of final judgment in this
19 lawsuit.

20 15. Plaintiff reserves the right to establish additional subclasses as appropriate.

21 16. There is a well-defined community of interest in the litigation and the class is
22 readily ascertainable:

23 (a) **Numerosity**: The members of the class (and each subclass, if any) are so
24 numerous that joinder of all members would be unfeasible and
25 impractical. The membership of the entire class is unknown to Plaintiff at
26 this time; however, the class is estimated to be sufficiently numerous and
27 the identity of such membership is readily ascertainable by inspection of
28 Defendants' employment records.

- 1 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
2 the interests of each class member with whom he has a well-defined
3 community of interest, and Plaintiff's claims (or defenses, if any) are
4 typical of all similarly situated employees' as demonstrated herein.
- 5 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect
6 the interests of each class member with whom he has a well-defined
7 community of interest and typicality of claims, as demonstrated herein.
8 Plaintiff acknowledges that he has an obligation to make known to the
9 Court any relationship, conflicts or differences with any class member.
10 Plaintiff's attorneys, the proposed class counsel, are well-versed in the
11 rules governing class action discovery, certification, and settlement.
12 Plaintiff and his counsel have incurred, and throughout the duration of this
13 action, will continue to incur costs and attorneys' fees that have been, are,
14 and will be necessarily expended for the prosecution of this action for the
15 substantial benefit of each class member.
- 16 (d) Superiority: The nature of this action makes the use of class action
17 adjudication superior to other methods. A class action will achieve
18 economies of time, effort and expense as compared with separate lawsuits,
19 and will avoid inconsistent outcomes because the same issues can be
20 adjudicated in the same manner and at the same time for the entire class.
- 21 (e) Public Policy Considerations: Employers in the State of California violate
22 employment and labor laws every day. Current employees are often afraid
23 to assert their rights out of fear of direct or indirect retaliation. Former
24 employees are fearful of bringing actions because they believe their
25 former employers might damage their future endeavors through negative
26 references and/or other means. Class actions provide the similarly situated
27 employees who are not named in the complaint with a type of anonymity
28 that allows for the vindication of their rights at the same time as their

1 privacy is protected.

2 17. There are common questions of law and fact as to the class (and each subclass, if
3 any) that predominate over questions affecting only individual members, including but not limited
4 to:

- 5 (a) Whether Defendants have properly paid Plaintiff and similarly situated
6 employees minimum wages for all hours worked, as required by
7 California law;
- 8 (b) Whether Defendants have paid Plaintiff and similarly situated employees
9 for all of their overtime hours at the correct hourly rate, as required by
10 California law;
- 11 (c) Whether Defendants have paid Plaintiff and similarly situated employees
12 all of their prevailing wages and benefits associated with public works
13 projects;
- 14 (d) Whether Defendants have provided Plaintiff and similarly situated
15 employees with 30-minute, duty-free meal periods within the first five
16 hours of work, and whether Defendants have paid the required premium
17 wages when compliant meal periods were not provided, as required by
18 California law;
- 19 (e) Whether Defendants have provided Plaintiff and similarly situated
20 employees with net 10-minute rest periods for every four hours worked or
21 major fraction thereof, and whether Defendants have paid the required
22 premium wages when compliant rest periods were not provided, as
23 required by California law;
- 24 (f) Whether Defendants paid Plaintiff and similarly situated employees all
25 wages owed upon the separation of their employment within the time
26 periods required by California law;
- 27 (g) Whether Defendants paid Plaintiff and similarly situated employees all
28 wages owed during employment within the time periods required by

California law;

- (h) Whether Defendants provided accurate, itemized wage statements to Plaintiff and similarly situated employees, as required by California law;
- (i) Whether Defendants' conduct, as described above, was willful or reckless;
- (j) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code §§ 17200, *et seq.*; and
- (k) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

GENERAL ALLEGATIONS

18. At all relevant times set forth herein, Defendants employed Plaintiff and other similarly situated persons as non-exempt employees who belong to the class as set forth above.

19. Defendants employed Plaintiff ELIAS TALAMANTES as a non-exempt, hourly-paid employee from approximately October 5, 2021 to approximately October 12, 2022. Plaintiff worked as a laborer and pipeliner. His job duties included performing emergency oil services such as pipeline maintenance and repair, oil spill cleaning, and hazmat cleaning.

20. Plaintiff and other similarly situated employees were not paid all their earned regular and overtime wages because Defendants directed, encouraged, or otherwise permitted Plaintiff and other employees to work off the clock. Defendants regularly understaffed the jobs such that Plaintiff and other employees were forced to work through meal and rest periods to finish jobs. Defendants regularly misreported on employees' time records that meal periods were taken when they were not. These off-the-clock hours worked were not compensated. Plaintiff and other employees were not allowed to record these additional times on their timesheets.

21. At all relevant times set forth herein, Defendant failed to pay prevailing wages to Plaintiff and other employees who worked on public works projects. Plaintiff and other similarly situated employees were paid at less than the applicable prevailing wage rate for all regular hours worked on public works projects. Defendants also failed to pay one-and-a-half times the basic rate of pay for all overtime hours worked on public works projects. As a result of the failure to pay

1 prevailing wages, Defendants failed to maintain and submit accurate certified payroll records.

2 22. Plaintiff and other similarly situated employees were not provided with a compliant
3 30-minute, duty-free meal period. They were not able to take duty-free meal breaks of at least 30
4 minutes for every 5 hours of work. Employees regularly suffered from late, short, and/or missed
5 meal periods because the demands of the job, particularly the emergency oil spills that required
6 immediate attention, forced employees to cut short or forego their meal periods to try to finish the
7 jobs to meet Defendants' deadlines. Further, Defendants regularly misreported on employees'
8 time records that meal periods were legally compliant when they were not. Defendants did not
9 pay meal period premium wages to Plaintiff and similarly situated employees when compliant
10 meal periods were not provided.

11 23. Plaintiff and similarly situated employees were not provided with compliant rest
12 periods in violation of California Labor Code § 226.7. Plaintiff and similarly situated employees
13 were unable to take net 10 minutes of rest period because of reasons described in ¶ 21, *supra*.
14 Defendants did not pay rest period premium wages to Plaintiff and similarly situated employees
15 when compliant rest periods were not provided.

16 24. Defendants did not pay Plaintiff and similarly situated employees all wages owed
17 upon the separation of their employment, including unpaid regular/overtime wages and prevailing
18 wages as described herein.

19 25. Defendants did not pay Plaintiff and similarly situated employees all wages owed
20 timely during employment, including unpaid regular/overtime wages and prevailing wages as
21 described herein.

22 26. Defendants did not provide Plaintiff and similarly situated employees with accurate
23 itemized wage statements, as required by California Labor Code § 226(a), because the wage
24 statements provided by Defendants fail to accurately state Plaintiff's and similarly situated
25 employees' total hours worked and the corresponding hourly rates as a result of the failure to pay
26 wages as described herein.

27 27. Defendants continue to employ non-exempt employees, who belong to the class as
28 set forth above, within California.

1 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
3 advisors knowledgeable about California labor and wage law, employment and personnel
4 practices, and about the requirements of California law.

5 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and similarly situated employees were entitled to receive
7 minimum wage for all hours worked as well as overtime pay at one-and-a-half times the regular
8 rate of pay, but that Plaintiff and similarly situated employees were not paid for all their hours
9 worked and/or at the correct overtime rate.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and similarly situated employees were entitled to receive
12 prevailing wages and related benefits for all hours worked on public works projects, and that
13 Plaintiff and similarly situated employees were not paid all prevailing wages owed.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and similarly situated employees were entitled to receive all meal
16 periods as required by California law, or payment of one additional hour of pay at the regular rate
17 of pay when a compliant meal period was not provided.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and similarly situated employees were entitled to receive all rest
20 periods as required by California law, or payment of one additional hour of pay at the regular rate
21 of pay when a compliant rest period was not provided.

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and similarly situated employees were entitled to timely payment
24 of all wages—including, without limitation, regular and overtime wages, prevailing
25 wages/benefits, and premium wages for meal/rest period violations—due upon termination or
26 discharge in accordance with California law.

27 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and similarly situated employees were entitled to timely payment

1 of all wages—including, without limitation, regular and overtime wages, prevailing
2 wages/benefits, and premium wages for meal/rest period violations—during employment in
3 accordance with California law.

4 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and similarly situated employees were entitled to receive
6 complete and accurate wage statements in accordance with California law.

7 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
9 and similarly situated employees, and that Defendants had the financial ability to pay such
10 compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to
11 Plaintiff and similarly situated employees that they were properly compensated, all in order to
12 increase Defendants' profits.

13 37. California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall
14 limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or
15 her] under this article."

16 38. At all times herein set forth, California Private Attorneys General Act, Labor Code
17 §§ 2698, *et seq.* ("PAGA") was applicable to Plaintiff's employment by Defendants.

18 39. At all times herein set forth, PAGA provides that any provision of law under the
19 California Labor Code that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency for violations of the California Labor Code may, as an
21 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
22 himself or herself and other current or former employees pursuant to procedures outlined in
23 California Labor Code § 2699.3.

24 40. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
25 employee," who is any person that was employed by the alleged violator and against whom one or
26 more of the alleged violations was committed.

27 41. Plaintiff was employed by Defendants and the alleged violations were committed
28 against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff

1 and other employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in
2 that they are all current or former employees of Defendants, and one or more of the alleged
3 violations were committed against them.

4 42. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
5 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
6 have been met:

7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the Labor and Workforce Development Agency and by
9 certified mail to the employer of the specific provisions of this code alleged
10 to have been violated, including the facts and theories to support the alleged
11 violation.

12 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
13 employer and the aggrieved employee by certified mail that it does not
14 intend to investigate the alleged violation within sixty (60) calendar days of
15 the postmark date of the Employee’s Notice. Upon receipt of the LWDA
16 Notice, or if the LWDA Notice is not provided within sixty-five (65)
17 calendar days of the postmark date of the Employee’s Notice, the aggrieved
18 employee may commence a civil action pursuant to California Labor Code
19 § 2699 to recover civil penalties in addition to any other penalties to which
20 the employee may be entitled.

21 (c) On February 9, 2023, Plaintiff provided the requisite written notice by
22 online filing to the LWDA and by certified mail to Defendant, informing
23 them of the specific provisions of the California Labor Code alleged to have
24 been violated, including the facts and theories to support the alleged
25 violations. As of the filing date of this complaint, Plaintiff and his counsel
26 have not received any response from the LWDA.

27 43. Plaintiff has satisfied the administrative prerequisites under California Labor Code
28 § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for

violations of California Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 1194, 1198, 1720, *et seq.*, 1771, 1774, 1811, and 1815.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510, 1194, and 1198

(Against All Defendants)

44. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 43.

45. California Labor Code § 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

46. During the relevant time period, Plaintiff and similarly situated employees consistently worked in excess of eight (8) hours in a day and/or in excess of forty (40) hours in a week.

47. California Labor Code § 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at minimum wage for all hours worked and at an applicable overtime rate of pay for all overtime hours worked.

48. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and similarly situated employees employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

49. Plaintiff and other similarly situated employees were not paid all their earned regular and overtime wages because Defendants directed, encouraged, or otherwise permitted Plaintiff and other employees to work off the clock. Defendants regularly understaffed the jobs

1 such that Plaintiff and other employees were forced to work through meal and rest periods to
2 finish jobs. Defendants regularly misreported on employees' time records that meal periods were
3 taken when they were not. These off-the-clock hours worked were not compensated. Plaintiff and
4 other employees were not allowed to record these additional times on their timesheets.

5 50. Defendants' failure to pay Plaintiff's and similarly situated employees' regular and
6 overtime wages violates the provisions of California Labor Code §§ 510, 1194 and 1198, and is
7 therefore unlawful.

8 51. Plaintiff and similarly situated employees are entitled to recover unpaid wages and
9 such general and special damages as may be appropriate and interest thereon.

10 52. Pursuant to California Labor Code § 1194, Plaintiff and similarly situated
11 employees are entitled to recover their unpaid overtime compensation, as well as interest, costs,
12 and attorneys' fees.

13
14 **SECOND CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 510, 1171, 1174, 1194, 1811, and 1815**

16 **(Against All Defendants)**

17 53. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
18 material allegations set out in paragraphs 1 through 52.

19 54. At all relevant times, Defendants performed work pursuant to public contracts, as
20 defined by California Labor Code § 1720, *et seq.* Plaintiff and other similarly situated employees
21 worked on public works projects over one thousand dollars (\$1,000).

22 55. At all relevant times, Defendants were subject to the prevailing wage requirements
23 set forth in California Labor Code § 1770, *et seq.* for work performed under public contracts.

24 56. At all relevant times, Plaintiff and other similarly situated employees were
25 "workers" within the meaning of California Labor Code § 1723.

26 57. Pursuant to California Labor Code §§ 1771, 1774, and 1194, Defendants had a duty
27 to pay Plaintiff and other similarly situated employees not less than the minimum required
28 prevailing wage rate for all work performed on public works projects.

58. Pursuant to California Labor Code §§ 510, 1811, 1815, Defendants had a duty to pay Plaintiff other similarly situated employees not less than one-and-a-half times the basic prevailing wage rate for all overtime hours worked on public works projects.

59. During the relevant time period, Defendants willfully failed to pay Plaintiff other similarly situated employees the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work projects were performed.

60. During the relevant time period, Defendants willfully failed to other similarly situated employees one-and-a-half times the basic prevailing wage rate for holiday and overtime worked on public works projects.

61. Defendants' failure to pay Plaintiff other similarly situated employees the applicable prevailing rate of per diem wages, as required by California laws, violates the provisions of California Labor Code §§ 510, 1771, 1774, 1194, 1811, and 1815, and is therefore unlawful.

62. Pursuant to California Labor Code § 1194, Plaintiff other similarly situated employees are entitled to recover the difference between the applicable prevailing wage rate for each hour worked and the amount actually paid, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

Violation of California Labor Code §§ 226.7 and 512(a)

(Against All Defendants)

63. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 62.

64. At all relevant times, the applicable IWC Wage Order and California Labor Code §§ 226.7 and 512(a) were applicable to Plaintiff's and similarly situated employees' employment by Defendants.

65. At all relevant times, California Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the California IWC.

66. At all relevant times, the applicable IWC Wage Order and California Labor Code § 512(a) provide that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

67. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is not more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

68. During the relevant time period, Plaintiff and similarly situated employees who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

69. During the relevant time period, Plaintiff and similarly situated employees who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

70. Plaintiff and other similarly situated employees were not provided with a compliant 30-minute, duty-free meal period. They were not able to take duty-free meal breaks of at least 30 minutes for every 5 hours of work. Employees regularly suffered from late, short, and/or missed meal periods because the demands of the job, particularly the emergency oil spills that required immediate attention, forced employees to cut short or forego their meal periods to try to finish the jobs to meet Defendants' deadlines. Further, Defendants regularly misreported on employees' time records that meal periods were legally compliant when they were not. Defendants did not pay meal period premium wages to Plaintiff and similarly situated employees when compliant

meal periods were not provided.

71. During the relevant time period, Defendants failed to pay Plaintiff and similarly situated employees the full meal period premium due for non-compliant meal periods pursuant to California Labor Code § 226.7.

72. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code §§ 226.7 and 512(a).

73. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b), Plaintiff and similarly situated employees are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that a compliant meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code § 226.7

(Against All Defendants)

74. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 73.

75. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code § 226.7 were applicable to Plaintiff's and similarly situated employees' employment by Defendants.

76. At all relevant times, California Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

77. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

78. During the relevant time period, Defendants required Plaintiff and similarly situated employees to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof.

79. Plaintiff and similarly situated employees were not provided with compliant rest periods in violation of California Labor Code § 226.7. Plaintiff and similarly situated employees were unable to take net 10 minutes of rest period because of reasons described in ¶ 21, *supra*. Defendants did not pay rest period premium wages to Plaintiff and similarly situated employees when compliant rest periods were not provided.

80. During the relevant time period, Defendants failed to pay Plaintiff and similarly situated employees the full rest period premium due for non-compliant rest periods pursuant to California Labor Code § 226.7.

81. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code § 226.7.

82. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b), Plaintiff and similarly situated employees are entitled to recover from Defendants one additional hour of pay at the employee's regular hourly rate of compensation for each work day that the rest period was not provided.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 201, 202, and 203

(Against All Defendants)

83. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 82.

84. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

85. The unpaid wages owed to Plaintiff and putative similarly situated employees at the time of termination of their employment include unpaid regular/overtime wages, prevailing wages, and premium wages for non-compliant meal/rest periods as set forth herein.

86. Defendants' failure to pay Plaintiff and those similarly situated employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201, 202 and 203.

87. All California employers know or should know that employees must be paid for all time spent under the employer's control and that overtime wages are paid at one and a half times the regular rate of pay. Defendants' failure to abide by these well-established laws is willful and not in good faith.

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

89. Plaintiff and similarly situated employees are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

SIXTH CAUSE OF ACTION

Violation of California Labor Code § 204

(Against All Defendants)

90. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 89.

91. At all times herein set forth, California Labor Code § 204 provides that the wages earned by any person in any employment (other than final wages, the wages of temporary employees, commissions, and the salaries of some exempt employees) are due and payable twice

1 during each calendar month. Labor performed between the 1st and 15th days of the calendar month
2 must be paid for between the 16th and 26th days of the calendar month, and labor performed
3 between the 16th and last days of the calendar month must be paid for between the 1st and 10th days
4 of the following month.

5 92. At all relevant times set forth herein, Defendants failed to pay Plaintiff and other
6 similarly situated employees in a timely manner for all wages earned during their employment.
7 This occurred as a result of Defendants' failure pay regular/overtime wages, prevailing wages, and
8 premium wages for non-compliant meal/rest periods as set forth herein.

9 93. All California employers know or should know that employees must be paid timely
10 during employment for all hours worked. Defendants' failure to abide by this well-established law
11 is willful and not in good faith.

12
13 **SEVENTH CAUSE OF ACTION**

14 **Violation of California Labor Code § 226(a)**

15 **(Against All Defendants)**

16 94. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
17 material allegations set out in paragraphs 1 through 93.

18 95. At all material times set forth herein, California Labor Code § 226(a) provides that
19 every employer shall furnish each of his or her employees an accurate itemized wage statement in
20 writing showing the following information: (1) gross wages earned; (2) total hours worked by the
21 employee, except for any employee whose compensation is solely based on a salary and who is
22 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
23 the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable
24 piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all
25 deductions made on written orders of the employee may be aggregated and shown as one item; (5)
26 net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the
27 name of the employee and his or her social security number, except that by January 1, 2008, only
28 the last four digits of his or her social security number or an employee identification number other

1 than a social security number may be shown on the itemized statement; (8) the name and address
2 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee.

4 96. Defendants have intentionally and willfully failed to provide employees with
5 complete and accurate wage statements because the wage statements provided by Defendants
6 failure to accurately state Plaintiff's and similarly situated employees' total hours worked and the
7 corresponding hourly rates as a result of the failure to pay regular and overtime time wages
8 described herein.

9 97. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
10 and similarly situated employees have suffered injury and damage to their statutorily-protected
11 rights.

12 98. Specifically, Plaintiff and other similarly situated employees have been injured by
13 Defendants' intentional violation of California Labor Code § 226(a) because they were denied
14 both their legal right to receive, and their protected interest in receiving, accurate, itemized wage
15 statements under California Labor Code § 226(a). Plaintiff and other similarly situated employees
16 have been injured by Defendants' intentional violation of California Labor Code § 226(a) in that it
17 has caused confusion over whether they had received all of the wages owed them, in addition to
18 their difficulty and expense in reconstructing pay records and making mathematical computations
19 to analyze whether the wages paid to them did in fact compensate them for all hours worked.

20 99. Furthermore, Labor Code § 226(e)(2)(B) provides that an employee is deemed to
21 suffer injury if the wage statement fails to accurately and completely provide certain pieces of
22 information and the employee cannot promptly and easily determine such information from the
23 wage statement alone. In relevant part, Labor Code § 226(e)(2)(B) provides that an employee is
24 deemed to suffer injury if the wage statement does not accurately and completely state the total
25 number of hours worked by the employee, and all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate.

27 100. Plaintiff and similarly situated employees are entitled to recover from Defendants
28 the greater of their actual damages caused by Defendants' failure to comply with California Labor

Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

101. Plaintiff and similarly situated employees are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g).

EIGHTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.*

(Against All Defendants)

102. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 101.

103. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other similarly situated employees, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

105. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. In this case, Defendants' policy and practice of not paying all minimum and overtime wages due violates California Labor Code §§ 510, 1194, and 1198; Defendants' policy and practice of failing to pay prevailing wages violates California Labor Code §§ 510, 1771, 1774, 1194, 1811, and 1815; Defendants' policy and practice of requiring Plaintiff and similarly situated employees to work through their meal and rest periods without paying them proper compensation violates California Labor Code §§ 226.7 and 512(a); Defendants' policy and practice of not timely paying all wages owed to Plaintiff and other similarly situated employees upon resignation or termination violates California Labor Code §§ 201, 202, and 203; Defendants' policy and practice of not timely paying all wages owed to Plaintiff and other similarly situated employees during employment violates California Labor Code § 204; and Defendants' policy and practice of failing to provide accurate itemized wage

statements violate California Labor Code § 226.

106. Plaintiff and putative similarly situated employees have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

107. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and putative similarly situated employees are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and similarly situated employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Private Attorneys General Act)

(Against All Defendants)

108. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 107.

109. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

110. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as 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 pursuant to procedures outlined in California Labor Code § 2699.3.

111. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

112. Plaintiff was employed by Defendants and the alleged violations were committed

1 against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff
2 and other employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in
3 that they are all current or former employees of Defendants, and one or more of the alleged
4 violations were committed against them.

5 113. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
6 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
7 have been met:

- 8 (a) The aggrieved employee or representative shall give written notice by
9 online filing with the Labor and Workforce Development Agency
10 (“LWDA”) and by certified mail to the employer of the specific provisions
11 of this code alleged to have been violated, including the facts and theories
12 to support the alleged violation.
- 13 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
14 employer and the aggrieved employee by certified mail that it does not
15 intend to investigate the alleged violation within sixty (60) calendar days of
16 the postmark date of the Employee’s Notice. Upon receipt of the LWDA
17 Notice, or if the LWDA Notice is not provided within sixty-five (65)
18 calendar days of the postmark date of the Employee’s Notice, the aggrieved
19 employee may commence a civil action pursuant to California Labor Code
20 § 2699 to recover civil penalties in addition to any other penalties to which
21 the employee may be entitled.
- 22 (c) On February 9, 2023, Plaintiff provided the requisite written notice by
23 online filing to the LWDA and by certified mail to Defendant, informing
24 them of the specific provisions of the California Labor Code alleged to have
25 been violated, including the facts and theories to support the alleged
26 violations. As of the filing date of this complaint, the LWDA has not
27 responded.

28 114. Plaintiff has satisfied the administrative prerequisites under California Labor Code

§ 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 1194, 1198, and 1720, *et seq.*

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510, 1194 and 1198 and applicable IWC Wage Orders by willfully failing to pay all wages, including regular and overtime wages, due to Plaintiff and similarly situated employees;

2. For general unpaid wages at the applicable wage rates and such general and special damages as may be appropriate;

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

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

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

As to the Second Cause of Action

6. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510, 1771, 1774, 1191, 1811, and 1815 by willfully failing to pay the applicable prevailing wage rates due to Plaintiff and similarly situated employees;

7. For general unpaid wages at the applicable wage rates and such general and special damages as may be appropriate;

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

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

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

As to the Third Cause of Action

11. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods to Plaintiff and similarly situated employees;

12. That the Court make an award to the Plaintiff and similarly situated employees of one (1) hour of pay at each employee's regular rate of compensation for each workday that a compliant meal period was not provided;

13. For all actual, consequential, and incidental losses and damages, according to proof;

14. For premiums pursuant to California Labor Code § 226.7(b);

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

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

As to the Fourth Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code § 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and similarly situated employees;

18. That the Court make an award to the Plaintiff and similarly situated employees of one (1) hour of pay at each employee's regular rate of compensation for each workday that a compliant rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premiums pursuant to California Labor Code § 226.7(b);

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

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

As to the Fifth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay Plaintiff and similarly situated employees all compensation owed to them at the time of their termination of the employment;

24. For all actual, consequential and incidental losses and damages, according to proof;

25. For statutory penalties pursuant to California Labor Code § 203; and

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

As to the Sixth Cause of Action

27. That the Court declare, adjudge and decree that Defendants violated California Labor Code § 204 by failing to timely pay Plaintiff and class members all compensation owed to them during their employment;

28. For all actual, consequential and incidental losses and damages, according to proof;

29. For statutory penalties pursuant to California Labor Code § 210; and

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

As to the Seventh Cause of Action

31. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders as to Plaintiff and similarly situated employees, and willfully failed to provide accurate itemized wage statements thereto;

32. For all actual, consequential and incidental losses and damages, according to proof;

33. For statutory penalties pursuant to California Labor Code § 226(e);

34. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g); and

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

As to the Eighth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code §§ 17200, *et seq.* by failing to pay Plaintiff and similarly situated

1 employees all wages due to them, including regular and overtime wages; failing to provide
2 compliant meal and rest periods to Plaintiff and similarly situated employees; failing to pay
3 premium wages when compliant meal and rest periods were not provided; failing to timely pay all
4 wages due upon employees' resignation or termination under California Labor Code §§ 201 – 203;
5 failing to timely pay all wages during employment under California Labor Code § 204; and failing
6 to provide Plaintiff and similarly situated employees with compliant wage statements under
7 California Labor Code § 226.

8 37. For restitution of unpaid wages to Plaintiff and all similarly situated employees and
9 prejudgment interest from the day such amounts were due and payable;

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

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

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

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

18 As to the Ninth Cause of Action

19 42. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the
20 amount of \$100 dollars for each violation per pay period for the initial violation and \$200 for each
21 aggrieved employee per pay period for each subsequent violation, plus attorneys' fees and costs;
22 and

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

24 Dated: May 12, 2023

AEQUITAS LEGAL GROUP

25 By: 

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