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ELECTRONICALLY FILED

Superior Court of California,

County of Alameda

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By: Darnekia Oliver,
Deputy Clerk

16 SUPERIOR COURT OF CALIFORNIA

17 COUNTY OF ALAMEDA

18 FABIAN LOPEZ, individually and on behalf of
19 all similarly situated individuals and aggrieved
20 employees,

21 Plaintiff,

22 v.

23 THYSSENKRUPP SUPPLY CHAIN
24 SERVICES, NA INC., and DOES 1 to 100,

25 Defendants.

) CASE NO. 23CV034331

) CLASS ACTION

) COMPLAINT

) 1. Violation of Unfair Competition Law

) 2. Failure to Pay All Wages (minimum
wage, off-the-clock)

) 3. Meal Period Violations

) 4. Rest Period Violations

) 5. Waiting Time Penalty

) 6. Wage Statement Penalty

) 7. Reimbursement of expenses

) 8. Penalties Under PAGA Labor Code §2698,
et seq.

DEMAND FOR JURY TRIAL

COMPLAINT

1 Plaintiff, Fabian Lopez, on behalf of himself and all others similarly situated and the
2 general public, hereby complains against Thyssenkrupp Supply Chain Services NA, Inc.
3 (hereinafter referred to as "Defendant"), and DOES 1 to 100, as follows:

4 **GENERAL ALLEGATIONS**

5 **JURISDICTION**

6 1. This is a civil action seeking recovery of unpaid wages under California Labor Code
7 §§ 203, 210, 226, 226.7, 510, 558, 1194, 1197.1, 1198. The Plaintiff for himself and on behalf of
8 the general public, and all others similarly situated, brings an action for monetary damages for
9 failure to pay wages as well as for injunctive relief, declaratory relief and restitution for
10 Defendant's violations of Business and Professions Code (B&PC) §17200, et seq., including full
11 restitution of all compensation retained by Defendant, as a result of its unlawful, fraudulent and
12 unfair business practices. Plaintiff seeks all available relief, including full damages, full restitution
13 and/or disgorgement of all revenues, earnings, profits, compensation and benefits retained by
14 Defendant as a result of its unlawful, unfair business practices.

15 **VENUE**

16 2. Venue as to the Defendant is proper in Alameda County pursuant to California Code
17 of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts complained of herein
18 occurred in the County of Alameda. Defendant either owns or maintain offices, transacts business,
19 has an agent or agents within the County of Alameda, or otherwise is found within the County of
20 Alameda, and Defendant is within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Fabian Lopez is an individual over the age of eighteen (18). At all relevant times
23 herein, Plaintiff Lopez was and currently is a resident of the County of Stanislaus County.

24 4. Plaintiff is informed and believes and thereon alleges that at all times mentioned
25 herein, Defendant Thyssenkrupp Supply Chain Services NA, Inc. is a Michigan Corporation doing
26 business in Alameda County.

1 5. Plaintiff is informed and believes and thereon alleges that at all times mentioned
2 herein, Defendant and each of them listed herein are professional entities licensed to do business in
3 California.

4 6. Plaintiff is informed and believes and thereon alleges that at all relevant times each
5 Defendant was licensed to do business in the State of California, County of Alameda with its
6 principal place of business in Livermore.

7 7. Further, Defendant is and was the employer of the Plaintiff and Plaintiff Class
8 during the Class Period. During the liability period, Defendant employed Plaintiff and similarly
9 situated non-exempt hourly employees and due to Defendant's uniform payroll practices, failed to
10 pay Plaintiff and Plaintiff Class for all time worked due to its rounding practice, failed to reimburse
11 Plaintiff and Plaintiff Class for out of pocket reasonable and necessary expenses paid for protective
12 gear required for work, and failed to pay Plaintiff and Plaintiff class premiums for missed rest and
13 meal periods at the regular rate of pay, and failed to provide accurate wage statements. On
14 information and belief and based thereon, Plaintiff alleges that Defendant is conducting business in
15 good standing in California.

16 8. Plaintiff is informed and believes and thereon alleges that Defendant and DOES 1 to
17 100, control and operate business and establishments in locations within the State of California,
18 including, but not limited to, the County of Alameda. Thus, each named Defendant and DOES 1 to
19 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code as
20 hereinafter alleged.

21 9. Plaintiff does not know the true names or capacities, whether individual, partner, or
22 corporate, of Defendant sued herein as DOES 1 to 100, inclusive, and for that reason, said
23 Defendant is sued under such fictitious names, and Plaintiff will seek from this Court leave to
24 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
25 and believes and thereon alleges that each Defendant and each fictitious Defendant, whether
26 individual, partners, or corporate, was responsible in some manner for the circumstances alleged
27 herein, and proximately caused Plaintiff and all others similarly situated hereinafter alleged and the
28

1 general public to be subjected to the unlawful employment practices, wrongs, injuries and damages
2 complained of herein.

3 PRIVATE ATTORNEY GENERAL ALLEGATIONS

4 10. Plaintiff on behalf of himself and all others similarly situated, filed this cause of
5 action acting as a private attorney general on behalf of the general public to challenge and remedy
6 the business practices of Defendant alleged herein.

7 11. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits
8 unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
9 practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which
10 constitute unfair, unlawful, or fraudulent business acts or practices within the State of California.
11 Any person that has suffered injury may initiate an action to enforce B&PC §17200. The court is
12 authorized to order injunctive relief, declaratory relief, and restitution to affected members of the
13 general public as remedies for any violations of B&PC §17200.

14 12. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action
15 as a private attorney general against Defendant under CCP §1021.5 based in part on the following:

16 a. A successful outcome in this action will result in the enforcement of
17 important rights affecting the public interest by maintaining the integrity of entities that employ
18 employees;

19 b. This action will result in a significant benefit to the general public by ceasing
20 unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains obtained by
21 Defendant through their failure to properly pay their employees;

22 c. Unless this action is prosecuted, members of the general public will not
23 recover monies wrongfully taken from them, and many employees and consumers would not be
24 aware that they were victimized by Defendant's wrongful acts and practices; and Unless attorneys'
25 fees and costs are awarded against Defendant, the general public will not be made whole.

26 CLASS REPRESENTATIVE

27 13. The class representative Plaintiff who worked in the position of non-exempt hourly
28 employee, while employed by Defendant within the State of California, is Fabian Lopez.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to CCP §382. The Classes which Plaintiff seeks to represent are composed of and defined as follows:

Class Definition:

All non-exempt employees who worked for Defendant as hourly warehouse personnel in California from years prior to the date of filing this action to the date of certification or judgment, whichever is earlier.

Class 1:

All non-exempt employees who worked for Defendant as hourly warehouse personnel in California from four years prior to the filing this action to the date of certification or judgment, whichever is earlier, and who were not paid premium overtime pay for hours over eight (8) in a day at the correct regular rate of pay. ("Overtime/ Regular Rate Class").

Class 2:

All non-exempt employees who worked for Defendant as hourly warehouse personnel in California from four years prior to the filing of this action to the date of certification or judgment, whichever is earlier, and who were not provided legally-compliant meal periods ("Meal Break Class").

Class 3:

All non-exempt employees who worked for Defendant as hourly warehouse personnel in California from four years prior to the filing of this action to the date of certification or judgment, whichever is earlier, and who were not provided legally-compliant rest periods ("Rest Break Class").

Class 4:

All non-exempt hourly employees who worked for Defendant at least one (1) day in California at any time from one (1) year preceding the filing of this Complaint through the date of the class certification order who were provided a paystub (a.k.a. wage statement) from Defendant ("Pay Stub Class"). (This is a stand-alone and derivative class for all classes).

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Class 5:

All non-exempt employees who worked for Defendant as hourly warehouse personnel in California from three years prior to the filing of this action to the date of certification or judgment, whichever is earlier, who are no longer employed by Defendant and were not paid all their earned wages. ("Waiting Time Penalty Class"). (This is a derivative class for all classes).

Class 6:

All current and former hourly non-exempt California employees who work or worked for Defendants at any time from four years from the date of filing through certification who were required to go through security checkpoints while off the clock. (Security Checkpoint Class).

The members of the classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time; however, it is estimated that the classes number greater than 100 individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

15. There are common questions of law and fact as to Plaintiff and all others similarly situated which predominate over questions affecting only individual members including, without limitation to:

- a. Whether Defendants did not pay overtime at the correct regular rate of pay in violation of Labor code sections 510 and 1194;
- b. Whether Defendant violated Labor Code section 512 and Wage Order 4 by not providing meal and rest breaks;
- c. Whether Defendants violated Labor Code section 226 by providing inaccurate wage statements;
- d. Whether Defendant violated Labor Code section 226.7 by not paying premium pay for missed meal and rest breaks;
- e. Whether Defendants engaged in unfair competition; and
- f. The amount of damages, wages, and penalties owed.

16. Plaintiff's claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiff, as representative party, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through her attorneys who are skilled and experienced in handling matters of this type. Plaintiff has no claims or interests that are

1 antagonistic to any class member.

2 17. The nature of this action and the nature of laws available to the members of the
3 classes identified herein make use of the class action format a particularly efficient and appropriate
4 procedure to afford relief to Plaintiff for the wrongs alleged herein. Further, this claim involves
5 one large employer, Defendant, and a large number of individual employees (Plaintiff and all
6 others similarly situated) with many relatively small claims with common issues of law and fact. If
7 each employee were required to file an individual lawsuit, the corporate Defendant would
8 necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the
9 limited resources of each individual Plaintiff with their vastly superior financial and legal
10 resources. Requiring each class member to pursue an individual remedy would also discourage the
11 assertion of lawful claims by employees who would be disinclined to pursue an action against their
12 present and/or former employer for an appreciable and justifiable fear of retaliation and permanent
13 damage to their careers at present and/or subsequent employment. Proof of a common business
14 practice or factual pattern, of which the named Plaintiff experienced, is representative of the class
15 mentioned herein and will establish the right of each of the members of the named class to recovery
16 on the causes of action alleged herein.

17 18. The prosecution of separate actions by the individual class members, even if
18 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
19 respect to the individual class members against Defendant herein; and which would establish
20 potentially incompatible standards of conduct for Defendant; and/or (b) legal determinations with
21 respect to individual class members which would, as a practical matter, be dispositive of the
22 interest of the other class members not parties to adjudications or which would substantially impair
23 or impede the ability of the class members to protect their interests. Further, the claims of the
24 individual members of the class are not sufficiently large to warrant vigorous individual
25 prosecution considering all of the concomitant costs and expenses attending thereto.

26 19. Plaintiff and all others similarly situated are entitled to the wages and other monies
27 unlawfully withheld.

28 **FIRST CAUSE OF ACTION**

(Violation of B&PC §17200, et seq.)

20. Plaintiff re-alleges and incorporates by reference herein the allegations of all

preceding paragraphs as though fully set forth herein.

21. Beginning on an exact date unknown to Plaintiff, Defendant has engaged in a pattern and practice of acts of unfair competition in violation of B&PC §17200, including the practices alleged herein.

VIOLATION OF MEAL PERIOD PROVISIONS

22. Defendant's improper meal policies are in violation of California law including, but not limited to Labor Code § 226.7, 512, and IWC Wage Order 9-2001. The Plaintiff and the members of the class are entitled to a half hour meal period for every five (5) hours of their shift worked. Defendant violated the meal break provisions and did not provide Plaintiff and the class with duty free meal periods. Plaintiff and the class were entitled to one (1) hour of pay for each meal break violation at their regular rate of pay. Plaintiff believes and thereon alleges that Defendant failed to pay Plaintiff and the putative class members missed meal period payments at the regular rate and had a policy and practice of failing to provide compliant duty free breaks.

23. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during the relevant class period.

FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS

24. Plaintiff and other members of the Rest Period Class are entitled to the benefits of Labor Code § 226.7 and Order 9-2001 of the Industrial Welfare Commission. Pursuant to Labor Code § 226.7 and Wage Order 9-2001, Plaintiff and the other members of the Rest Period Class were entitled to separate rest periods of at least 10 minutes for each four-hour period of work or major fraction thereof, and one hour of additional pay for every shift a rest period was not provided in conformance with this obligation.

25. Plaintiff is informed and believes, and thereon alleges that Defendant consistently compelled Plaintiff and other members of the Rest Period Class employed for shifts of more than four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) or three (3) rest breaks required depending on shift length. Further, Plaintiff alleges Defendant failed to provide duty-free rest periods and off-site rest periods to Plaintiff and the class.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

26. Plaintiff is informed and believes and thereon alleges that as part of Defendant's

1 ongoing unfair business practices, Defendant, and each of them, fails to provide its employees with
2 proper and understandable itemized wage statement, as required by Labor Code § 226.

3 27. Plaintiff is informed, and believes, and thereon alleges, that Defendant, and each of
4 them, fail to provide each employee with an itemized statement which states the actual regular rate
5 paid, the actual total hours worked by the employee, the net wages earned, and all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours worked at each hourly
7 rate by the employee.

8 **VIOLATION OF LABOR CODE § 200, ET SEQ.**

9 28. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
10 ongoing unfair business practices, Defendant failed to provide all hourly employees all wages at
11 the time of their separation in violation of Labor Code § 200, et. seq. This is a derivative claim in
12 that all hourly employees who are no longer employed by Defendant who establish liability on any
13 claim alleged in this action are entitled to recover under Labor Code §203.

14 29. Labor Code § 200, et seq. provides that an employer is required to pay an employee
15 all wages (including accrued vacation) within twenty-four (24) hours of the employee's involuntary
16 separation from employment; within twenty-four (24) hours of his or her voluntary separation if the
17 employee gave at least seventy-two (72) hours' notice, and within seventy-two (72) hours, if the
18 employee voluntarily separated, but did not give at least seventy-two (72) hours' notice.

19 30. Plaintiffs are informed and believe and thereon allege that all employees who have
20 been separated from Defendant did not timely receive a final paycheck detailing the proper amount
21 of wages from Defendant in violation of Labor Code § 200, et. seq.

22 31. Pursuant to Labor Code § 200, et seq. employees that no longer work for
23 Defendant, and who were not timely paid, are entitled to one (1) day of pay in penalties for each
24 day that he or she was paid late, until payment was made, up to a maximum of thirty (30) days.

25 **FAILURE TO PAY PROPER WAGES AND OVERTIME COMPENSATION**

26 32. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
27 ongoing unfair business practice, Defendant's employees were and are employed and scheduled as
28 a matter of established company policy to work, and in fact, worked in excess of eight (8) hours in
a day. The hours worked by Defendant's employees is in excess of eight (8) hours per day, and in

1 excess of forty (40) hours per week without receiving the proper overtime premium. The
2 Defendants are in violation of Labor Code §§ 510 and 1194, and the relevant California Industrial
3 Welfare Commission Orders 09-2001, et seq.

4 33. Under Labor Code §1194, an employee is not fully compensated for the unpaid
5 balance of their overtime compensation unless the employee is paid all unpaid compensation for
6 the regular hours and overtime hours worked during an overtime shift.

7 34. While Defendants' policy is to pay time-and-a-half for all hours worked in excess of
8 eight (8) hours per day, Defendants fail to pay members of the class proper premium overtime
9 premiums due to Defendant failing to properly calculate the regular rate of pay.

10 35. Plaintiff and all others similarly situated identified herein were and are employed
11 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
12 hourly employees in excess of eight (8) hours per day for eight and one-half (8.5), nine (9), ten (10)
13 or twelve (12) hour shifts. Defendant employs and schedules all employees without providing
14 daily overtime compensation for such excess daily overtime hours worked in violation of Labor
15 Code §§ 510, 1194, 1198 and the relevant California Industrial Welfare Commission (IWC)
16 orders. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the hours
17 set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC Wage
18 Order No. 9, as amended, applies to Plaintiff and the hourly employees.

19 36. Defendant, and each of them, consistently administered a corporate policy
20 regarding, both staffing levels, duties and responsibilities of Defendant's employees, which
21 required that the entirety of the employees work overtime without proper premium overtime pay.
22 Further, the Plaintiff and the class are entitled to restitution of these wages obtained by Defendant,
23 and each of them.

24 37. This corporate policy and pattern of conduct is accomplished with the advance
25 knowledge and designed intent not to pay the employees at a premium rate for all overtime hours.
26 Further, the Plaintiff and the members of the class are entitled to restitution of these wages obtained
27 by Defendant, and each of them.

28 38. Further, the Plaintiff and the members of the classes are entitled to restitution of all
unpaid wages obtained by Defendant, and each of them. Plaintiff, and the class, may seek
restitution for unpaid straight time wages under California Business & Professions Code §17200, et

1 *seq.* ("Section 17200"). Any business act or practice that violates the Labor Code through a failure
2 to pay wages is by definition an unfair business practice under §17200. Section 17200 provides an
3 action to recover wages as restitution, even if such recovery might be barred if brought pursuant to
4 the Labor Code, if the failure to pay constitutes a business practice. Defendants' failure to properly
5 pay all wages, including straight time and the overtime premium at the correct regular rate,
6 constitutes an unfair business practice because it is a failure to timely pay wages pursuant to Labor
7 Code §204; Unpaid straight time wages and unpaid overtime wages are recoverable as restitution
8 under Section 17200 based on Defendant's subterfuge which constitutes an unfair business practice
9 that fails to pay earned wages in violation of the Labor Code. Defendants have continuously
10 concealed their subterfuge business practices, as herein alleged.

11 39. Plaintiff is informed and believes and thereon alleges that as part of Defendant's
12 ongoing unfair business practice, Defendant's California resident hourly employees were and are
13 employed and schedule as a matter of established company policy to work, and in fact, worked
14 over eight (8) hours a day. The hours worked by Defendant's hourly employees is in excess of
15 eight (8) hours per day, and in excess of forty (40) hours per pay period without receiving the
16 proper straight time or overtime compensation for such excess hours worked in violation of Labor
17 Code §§ 203, 510 and 1194, and the relevant California Industrial Welfare Commission orders.

18 40. Plaintiff and all others similarly situated identified herein were and are employed
19 and scheduled as a matter of established company policy to work and in fact worked as non-exempt
20 hourly employees in excess of eight (8) hours per day. Defendant employed and scheduled all
21 employees without providing overtime compensation for such excess daily overtime hours worked
22 in violation of Labor Code §§ 510, 1194, 1198 and the relevant California Industrial Welfare
23 Commission (IWC) orders, including daily and weekly overtime premiums, including the seventh
24 day premium. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than the
25 hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC
26 Wage Order No. 09, as amended, applies to Plaintiff.

27 41. Plaintiff seeks restitution for all the aforementioned violations.

28 **FAILURE TO PAY FOR ALL TIME WORKED (OFF THE CLOCK)**

42. Plaintiff is informed and believes and thereon alleges, that at all times herein
mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited by

1 California B&PC §17200, by failing to pay for time worked off the clock. Defendant suffered or
2 permitted Plaintiff to work off the clock.

3 43. Further, Plaintiff is informed and believes and thereon alleges, that Plaintiff and the
4 Class were required to perform work off-the-clock. Despite recording time on the clock, Defendant
5 failed to pay Plaintiff and the Class for all time worked, including but not limited to straight time,
6 overtime due to mandatory security checks.

7 44. Defendant, and each of them, have engaged in unfair business practices in California
8 by practicing, employing and utilizing the employment practices complained of herein.
9 Defendant's use of such practices constitutes an unfair business practice, unfair competition, and
10 provides an unfair advantage over Defendant's competitors. Plaintiff and the putative class seek
11 full restitution of said monies, as necessary and according to proof, to restore any and all monies
12 withheld and/or acquired by Defendant by means of the unfair business practices complained of
13 herein. Plaintiff seeks, on behalf of all current and former employees of Defendant, restitution of
14 said monies. Plaintiff further seeks, on behalf of the Plaintiff and the putative class, the
15 appointment of a receiver, as necessary, to establish the total restitutionary relief from Defendant.
16 The restitution includes all wages withheld by Defendant as a result of the unfair business
17 practices, including interest thereon. Absent a statutory provision specifically governing the type
18 of claim at issue, the prejudgment interest rate is 10 percent.

19 45. Plaintiff is informed and believes and thereon alleges that at all times herein
20 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices prohibited
21 by California B&PC §17200, thereby depriving their employees and the putative class the
22 minimum working condition, standards and conditions due to them under the California labor laws
23 and Industrial Welfare Commission wage orders as specifically described herein. Plaintiff further
24 seeks an order requiring Defendant to identify by full name, telephone number, and last known
25 address employees who worked or still work for Defendant from four (4) years preceding the filing
26 of the Complaint through the date of judgment; Plaintiff further seeks an order requiring Defendant
27 to timely pay restitution to all current and former employees, including back wages, and interest.
28 The acts complained of herein occurred, at least in part, within the last four (4) years preceding the
filing of the original Complaint.

46. By and through its unfair, unlawful, and/or fraudulent business practices and acts

1 described herein, Defendant has obtained valuable services from Plaintiff and all persons similarly
2 situated and has deprived Plaintiff and all persons similarly situated of valuable rights and benefits
3 guaranteed by law, all to their detriment.

4 47. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to
5 and do seek such relief as may be necessary to restore to them the money and property which
6 Defendant has acquired, or of which Plaintiff and class members have been deprived by means of
7 the herein described unfair, unlawful, and/or fraudulent business practices.

8 48. Plaintiff, and all persons similarly situated, and all persons in interest, are further
9 entitled to and do seek a declaration that the above-described business practices are unfair, unlawful,
10 and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of the herein
11 described unfair, unlawful, and/or fraudulent business practices at all times in the future.

12 49. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
13 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGE AND/OR STRAIGHT TIME WAGES AND** 16 **OVERTIME**

17 **(Plaintiff and the Class Against All Defendants)**

18 50. Plaintiff and the Class incorporate by reference all the aforementioned paragraphs of
19 the amended complaint.

20 51. Labor Code section 1194(a) provides that "...any employee receiving less than the
21 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
22 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
23 compensation, including interest thereon, reasonable attorneys' fees, and costs of suit."

24 52. At all times relevant, Defendant required Plaintiff and the Class to work hours off-
25 the-clock, for which Defendant failed to pay them at the appropriate minimum wage and/or straight
26 time wages, or overtime wages.

27 53. As a result of Defendant's unlawful wage practices as alleged herein, Plaintiff and
28 the Class have been denied the appropriate minimum wage and/or straight time wages and overtime
for all hours worked by them. Plaintiff and the class are entitled to minimum wage and overtime

1 wages pursuant to LC §§ 510 and 1194.

2 54. As a result of Defendant's acts and omissions as alleged herein, Plaintiff requests
3 that the Court find Defendant to have willfully failed to pay all minimum wages and/or straight
4 time wages or overtime, to Plaintiff and the Class; award all actual losses and damages; award
5 prejudgment interest on any unpaid minimum wages and/or straight time wages from the date such
6 amounts were due; award liquidated damages; all legally authorized penalties; and reasonable
7 attorney's fees and costs.

8 THIRD CAUSE OF ACTION

9 **FAILURE TO PROVIDE MEAL BREAKS**

10 55. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
11 paragraphs above.

12 56. Labor Code §226.7 requires an employer to pay an additional hour of compensation
13 for each meal period the employer fails to provide. Plaintiff alleges that Defendant failed to
14 provide legally compliant meals in addition to impeding, discouraging and/or dissuading
15 employees from taking legally compliant meal periods. Employees are entitled to a meal period of
16 at least thirty (30) minutes per five (5) hour work period. Plaintiff and the class consistently
17 worked over five (5) hour shifts without meal periods due to Defendant's policy of discouraging,
18 dissuading and/or impeding Plaintiff and the class from taking meal periods. Plaintiff and the class
19 were scheduled by Defendant in such a way that they were not able to take compliant meal breaks
20 and complete their tasks for the day. Pursuant to the Code, Plaintiff and the class are entitled to a
21 meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

22 57. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
23 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during
24 the relevant class period.

25 58. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal
26 to one (1) hour of wages at the employee's regular rate per missed meal break, in a sum to be
27 proven at trial.

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FOURTH CAUSE OF ACTION

FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7

(Against All Defendants)

59. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the aforementioned allegations.

60. Plaintiff alleges that Defendant violated Labor Code §§226.7 & the applicable Wage Order. Section 226.7 of the Labor Code requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Hourly non-exempt employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof. The Defendant's policy discourages, dissuades, and prevents all hourly non-exempt employees from taking a duty-free rest period break for any work period that is greater than two (2) hours up to four (4) hours. Plaintiff and the Plaintiff Class consistently worked over four (4) hours per shift with no duty-free, off-premises rest breaks, due to Defendant's policy of discouraging, dissuading and/or preventing hourly employees from taking compliant rest periods.

61. Further, even if rest premiums were paid, they were not paid at the correct regular rate pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

62. Pursuant to Labor Code §226.7, Plaintiff and the Plaintiff Class are entitled to damages in an amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest break violation, in a sum to be proven at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES

WAITING TIME PENALTIES (Labor Code §§201-203)

63. Labor Code §201 states that an employer is required to provide an employee who is terminated all unpaid wages immediately upon termination.

64. Plaintiff is informed and believes and thereon alleges that Defendant failed to pay Plaintiff all wages due and owing immediately upon termination, thereby violating Labor Code §201.

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65. Labor Code §202 states, in pertinent part, that an employer is required to provide an employee who quits his or her employment all wages due and owing not later than 72 hours thereafter.

66. Plaintiff is informed and believes and thereon alleges that Defendant and each of them failed to pay Plaintiff all wages due and owing upon voluntary resignation, thereby violating Labor Code §202.

67. Labor Code §203 states that if an employer willfully fails to pay an employee wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to a maximum of 30 days.

68. Defendant willfully withheld paying Plaintiff's wages thereby violating Labor Code §203. As such, Defendant is required to pay Plaintiff a 30-day wage penalty in addition to all unpaid wages as described herein.

69. Accordingly, Plaintiff and the Waiting Time Penalty Class members are entitled to attorneys' fees, and costs, pursuant to Labor Code § 203 and prejudgment interest.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS PURSUANT TO LABOR CODE §226

Against All Defendants

70. Plaintiff re-alleges and incorporates by reference herein the allegations of all preceding paragraphs as though fully set forth herein. The applicable Wage Order provides:

Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. Subsection (e) provides: "Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

71. During the Class Period, Defendant knowingly and intentionally failed to

1 provide Plaintiff and the class with timely and accurate wage statements showing gross
2 wages earned, total hours worked, all deductions made, net wages earned, the name and
3 address of the legal entity employing that Class Member, the inclusive dates of the period
4 for which the employee is paid, and all applicable hourly rates in effect during each pay
5 period and the corresponding number of hours worked at each hourly rate by that Class
6 Member. Further, the pay stubs were inaccurate due to the off the clock mandatory security
7 checks. Additionally, Plaintiff alleges that Defendant's pay stubs failed to list all hours
8 worked at each rate paid during the pay period.

9 72. Defendant thus required Plaintiff and the class to work under conditions
10 prohibited by order of the Industrial Welfare Commission, in violation of those orders.

11 73. Plaintiffs' and the class members' did not comply with the strictures of
12 Labor Code section 226, and pursuant to subdivision (e)(2)(B) which states that an
13 employee is deemed to suffer injury if the employer fails to provide accurate and complete
14 information and the employee cannot promptly and easily determine from the wage
15 statement at least one of the following: 1) amount of wages for the pay period, 2) which
16 deductions were made, 3) name/address of the employer, or 4) name of the employee with
identification number.

17 74. For example, the wage statements contained the following line items that are
18 arguably inscrutable – OTHr1.5, OTHr2.0, ShftPrem, OTShPrem, OTPrm2.0, and
19 NoLunchP. Further, some of the items were subtracted from the wages, and then added
20 back without any explanation. Also, there was an item for "post tax deductions" which just
21 listed "both" as the deduction.

22 75. Thus, all of Plaintiff's and the class members did not comply with Labor
23 Code section 226.

24 76. Further, any premium or additional pay was not factored into the regular rate
25 of pay, meaning that Plaintiff and the class members were not paid overtime at the correct
26 regular rate of pay as required by Labor Code section 1194.

27 74. The Class Members, including Plaintiff, suffered injury as a result of
28 Defendant's knowing and intentional failure to provide the Class Members, including
Plaintiff, with the wage and hour statements required by law, as Plaintiff and the class were

1 unable to tell from looking at their pay stubs if they were being paid properly.

2 75. Based on Defendant's conduct as alleged herein, Defendants are liable for
3 actual damages, statutory damages and/or statutory penalties pursuant to Labor Code §226,
4 attorney's fees and costs.

5 **SEVENTH CAUSE OF ACTION**

6 **WORK EXPENDITURE REIMBURSEMENTS**

7 **(Against All Defendants)**

8 76. Plaintiff re-alleges and incorporate each and every one of the allegations of all
9 preceding paragraphs.

10 77. Labor Code section 2802(a) requires an employer to indemnify their employees for
11 all necessary expenditures or losses in the direct discharge of their duties.

12 78. Defendants have a uniform policy that requires Plaintiff and the class members to
13 pay steel toe shoes but will only reimburse up to \$40.00 regardless of the actual cost of the shoes.

14 79. Also, Defendants made actual deductions for work-related expenses that were
15 never reimbursed.

16 80. As a result, Plaintiff and the class members are entitled to reimbursement for all the
17 above expenses, as well as attorney fees.

18
19 **EIGHTH CAUSE OF ACTION**

20 **CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699**

21 81. Plaintiff re-alleges and incorporates each and every one of the allegations of all
22 preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth
23 herein.

24 82. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of 2004,
25 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
26 Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees
27 for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee
28 on behalf of himself or herself, and collectively on behalf of all other current or former employees.

83. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

84. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

85. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on or about March 21, 2023, via mandatory online filing through the State of California LWDA/ Department of Industrial Relations website with a copy to the employer via certified mail, of the specific provisions of this code alleged to have been violated, including listing some facts and some theories to support the alleged violations as required by Labor Code §2699.3; A true and correct copy of the letter is attached hereto as **Exhibit 1**. Plaintiff alleges that he has exhausted all administrative remedies and filed the herein complaint 65 days after mailing said notice. At the date of filing this Complaint, the LWDA has not responded with any intention to investigate. As such, Plaintiff has exhausted his administrative requirements pursuant to Labor Code §2699.3(a)(1) and (2) (A-C).

86. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

87. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved employees are entitled to recover civil penalties for each of the Defendant's violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

- a. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

- 1 b. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00) per
2 employee for initial violation and one thousand dollars (\$1,000.00) per employee
3 for each subsequent violation (penalty amounts established by Labor Code §
4 226.3).
- 5 c. For violations of Labor Code § 512, fifty dollars (\$50.00) for each aggrieved
6 employee for each initial violation for pay period for which the employee was
7 underpaid in addition to an amount sufficient to recover unpaid wages and one
8 hundred dollars (\$100.00) for each underpaid employee for each pay period for
9 which the employee was underpaid (penalty amounts established by Labor Code §
10 558).
- 11 d. For violations of Labor Code § 1197, one hundred dollars (\$100.00) for each
12 aggrieved employee for each initial and intentional violation per pay period
13 (regardless of whether the initial violations were intentionally committed) and two
14 hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent
15 violation per pay period (regardless of whether the initial violations were
16 intentionally committed), in addition to an amount sufficient to recover unpaid
17 wages, liquidated damages pursuant to Labor Code § 1194.2, and applicable
18 penalties imposed pursuant to Labor Code § 203.
- 19 e. For violations of Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars
20 (\$100.00) for each aggrieved employee per pay period for each initial violation and
21 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
22 subsequent violation (penalty amounts established by Labor Code § 2699(f)(2)).
- 23 f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code of
24 Regulations in the amount of \$50 for each aggrieved employee per pay period for
25 the initial violation, and \$100 for each aggrieved employee per pay period for each
26 subsequent violation;
- 27 g. Penalties under Labor Code §210, in addition to and entirely independent and
28 apart from other penalty provided in the Labor Code, in the amount of \$100 for
each aggrieved employee per pay period for each violation, and \$200 for each

aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

- h. Penalties under Labor Code §256, in addition to and entirely independent and apart from other penalty provided in the Labor Code, including Labor Code §2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;
- i. Penalties under Labor Code §558, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid pursuant to Labor Code §558 provided to the affected employees;
- j. Penalties under Labor Code §226.3, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;
- k. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes.

- l. Penalties under Labor Code section 210 for the weekly pay violations.

88. Pursuant to Labor Code §2699(g), Plaintiff and the aggrieved employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

- 1. That the Court determine this action may be maintained as a class action;

As to the First Cause of Action:

- 2. For an order preliminarily and permanently enjoining Defendants from engaging in

1 the practices challenged herein;

2 3. An order for full restitution of all monies, as necessary and according to proof, to
3 restore any and all monies withheld by the Defendants by means of the unfair practice complained
4 of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as
5 necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§ 200,
6 et seq., 510, and 1194, and interest, and attorneys' fees as a result of the unfair business practices or
7 retained in violation of Labor Code §1198 and IWC Wage Order 09-2001;

8 4. For an order finding and declaring that Defendants' acts and practices as challenged
9 herein are unlawful, and unfair and/or fraudulent;

10 5. For an accounting, under administration of Plaintiff and subject to Court Review, to
11 determine the amount to be returned by Defendants and the amounts to be refunded to members
12 who are or were not paid all their wages due to Defendants' unfair business practices;

13 6. For the creation of an administrative process wherein each injured current and
14 former employee receives his or her back wages in the form of overtime pay or alternatively that
15 each current or former eligible employee may submit a claim in order to receive his/her money;

16 7. For an order requiring Defendants to make full restitution and payment pursuant to
17 B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et seq.,
18 510, and 1194;

19 8. For reasonable attorneys' fees under Code of Civil Procedure §1021.5 all other
20 appropriate declaratory and equitable relief;

21 9. For pre-judgment interest to the extent permitted by law;

22 10. For pre-judgment interest to the extent permitted by law and the California
23 Constitution;

24 11. For an order requiring Defendants to identify, by name, address and telephone
25 number of each person who worked as an hourly non-exempt employee for Defendants from four
26 (4) years before filing of the original complaint in this action through the time of judgment;

27 **As to the Second Cause of Action:**

28 12. That the Court grant to Plaintiff and the Class an award of unpaid minimum wages

1 or straight time wages as well as unpaid overtime premiums; liquidated damages as allowed by
2 statute; prejudgment interest on any unpaid wages from the date such amounts were due; and for all
3 legally authorized penalties.

4 13. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a)
5 and CC §3287;

6 14. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5
7 and/or Labor Code §1194(a);

8 **As to the Third Cause of Action:**

9 15. One (1) hour of pay at each of the employees' regular rate of compensation for each
10 workday that a meal break was not provided, impeded, discouraged and/or dissuaded and/or correct
11 pay for missed meal premiums at the correct regular rate;

12 **As to the Fourth Cause of Action:**

13 16. One (1) hour of pay at each of the employees' regular rate of compensation for each
14 workday that a rest break was not remitted or authorized, or was impeded, discouraged and/or
15 dissuaded.

16 **As to the Fifth Cause of Action:**

17 17. For waiting time penalties for all former employees not timely paid their last pay
18 check, including vacation pay;

19 18. For reasonable attorneys' fees and costs;

20 **As to the Sixth Cause of Action:**

21 19. For recovery as authorized by Labor Code §226(e);

22 20. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e)
23 and/or §226(g);

24 **As to the Seventh Cause of Action:**

25 21. Reimbursement of all deductions from wages related to expenses;

26 22. Attorney fees and costs;

27 **As to the Eighth Cause of Action:**

28 23. On behalf of all current and former employees, for all civil penalties authorized by

1 Labor Code Private Attorney General Act of 2004 as specified in Labor Code §558 plus Labor
2 Code §1197.1 for former or current employees who are due wage payments;

3 24. For civil penalties per Labor Code §226.3 in the amount of \$250 for each aggrieved
4 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay
5 period for each subsequent violation;

6 25. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
7 same rate, for each day that an aggrieved employee was paid late, at the time of termination, until
8 payment was/is made, up to a maximum of thirty (30) days;

9 26. For civil penalties, pursuant to Labor Code § 558 as follows:

10 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
11 each pay period for which the employee was underpaid;

12 (2) For each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was underpaid;

14 27. For civil penalties under Labor Code §210, in addition to and entirely independent
15 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
16 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period
17 for each subsequent violation, plus 25% of the wage wrongly withheld;

18 28. For civil penalties under Labor Code §2699(f), in addition to and entirely
19 independent and apart from other penalty provided in the Labor Code and for Labor Code
20 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per
21 pay period for each violation, and \$200 for each aggrieved employee per pay period for each
22 subsequent violation.

23 **As to All Causes of Action:**

24 29. For such other and further relief as this Court may deem just and proper.

25 Date: May 25, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

26
27 /s/ Janelle Carney
28 Attorney for Plaintiff
Fabian Lopez

JURY TRIAL DEMAND

Plaintiff FABIAN LOPEZ hereby demands a jury trial on all issues so triable.

Date: May 25, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

/s/ Janelle Carney
Janelle Carney,
Attorney for Plaintiff
Fabian Lopez