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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

MOISES VARELA, individually, and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

SWICKARD CROWN, LLC, a Delaware
corporation, doing business as CROWN
TOYOTA; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVSB2530900

Assigned for All Purposes To:

Hon. Jeffrey R. Erickson

Dept.: S14 - SBJC

FIRST AMENDED COMPLAINT

**CLASS AND PAGA ACTION
COMPLAINT FOR DAMAGES FOR:**

- 1) Violation of Cal. Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- 2) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime);
- 3) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- 4) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums);
- 5) Violation of Cal. Labor Code §§ 201, 202, and 203 (Untimely Final Wages);
- 6) Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements);
- 7) Violation of Cal. Business & Professions Code § 17200, *et seq.* (Unfair Competition);
- 8) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses);
- 9) Violation of Cal. Labor Code § 227.3

(Failure to Pay Earned Vacation Wages)
10) Civil Penalties Pursuant to Private
Attorneys' General Act, Labor Code section
2698 et seq.

DEMAND FOR JURY TRIAL

Plaintiff MOISES VARELA ("Plaintiff"), individually, and on behalf of himself and all others similarly situated, asserts claims against defendant SWICKARD CROWN, LLC, a Delaware corporation, and DOES 1 through 50, inclusive (collectively "SWICKARD" or "Defendant(s)") as follows:

INTRODUCTION

1. The purpose of this amendment is to assert new claims under Labor Code section 2698 et seq. ("PAGA") within the context of the above-entitled action.

2. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants as non-exempt employees, however titled, in the State of California within four (4) years prior to the filing of the Complaint in this action until the resolution of this lawsuit and whose job duties did not consist of over 50% administrative, executive or professional duties (collectively referred to as the "Class" or "Class Members" or "Non-Exempt Employees").

3. Plaintiff also brings an action pursuant to the PAGA on a representative basis on behalf of all non-exempt employees, however titled, employed by Defendants in the State of California (the "Aggrieved Employees") from one year prior to the filing of the PAGA notice to the conclusion of this action. Plaintiff seeks to recover civil penalties and address Defendants' violations of the California Labor Code and the IWC Wage Order under PAGA. The "Aggrieved Employees" are a subgroup of the Class Members or Non-Exempt Employees.

4. During the "liability period," as defined as the applicable statute of limitations for each and every cause of action contained herein – i.e. Plaintiff's claims under the Unfair Competition Law is four (4) years; Plaintiff's claims for either unpaid wages or actual damages is

three (3) years; and Plaintiff's claims for statutory penalties is one (1) year from the filing of this action through the present (referred to as "the liability period(s)") – Defendants consistently maintained and enforced against its Non-Exempt Employees unlawful practices and policies in violation of California state wage and hour laws, including failing to lawfully and accurately pay Plaintiff and Class Members for all hours worked, including minimum wages and overtime; failing to lawfully provide meal and rest periods; failing to pay one hour of pay at the employee's regular rate of pay when legally mandated meal or rest periods were not lawfully provided; failing to accurately pay overtime; failing to reimburse necessary expenses; failing to provide accurate itemized wage statements; and failing to keep accurate records.

5. Defendants implemented uniform policies and practices that deprived Plaintiff and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; vacation wages; failing to reimburse necessary expenses; and lawful meal and/or rest breaks.

6. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, penalties, liquidated damages, and reasonable attorneys' fees and costs.

7. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

JURISDICTION AND VENUE

8. This action is brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the California Superior Court and will be established according to proof at trial.

1 9. This Court has jurisdiction over this action pursuant to the California Constitution
2 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
3 those given by statute to other courts. The statutes under which this action is brought do not give
4 jurisdiction to any other court.

5 10. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

7 11. This Court has jurisdiction over Defendants because, upon information and belief,
8 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
9 otherwise intentionally avails itself of the California market so as to render the exercise of
10 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
11 substantial justice. Defendants have done and are doing business throughout California.

12 12. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
13 similarly situated Non-Exempt Employees within San Bernardino County and it is believed that
14 Defendants have employed over one hundred Class Members as Non-Exempt Employees
15 throughout the state.

16 13. The California Superior Court also has jurisdiction in this matter because the
17 individual claims of the Class Members described herein are presently believed to be under the
18 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
19 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
20 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
21 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
22 Further, there is no federal question at issue, as the issues herein are based solely on California
23 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
24 Procedure, the California Civil Code, and the California Business and Professions Code.

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

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PARTIES

15. Plaintiff Moises Varela is and during the liability period has been, a resident of Ontario, California. Plaintiff was employed by defendant during the liability period as a Salesman in Ontario, CA. Plaintiff and the members of the putative class were employed by defendants as non-exempt employees in sales or similar related positions, however titled, (the “Class Members” or “Non-Exempt Employees”)

16. Defendant Swickard Crown, LLC, which does business in California as Crown Toyota, is a Delaware corporation in good standing that is authorized to do business throughout the State of California. Swickard Crown, LLC’s headquarters are located at 1650 Spring Gate Lane, Las Vegas, Nevada 89134. Swickard Crown, LLC operates in California from numerous locations. Swickard Crown, LLC provides vehicle retail services.

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

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

19. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

20. Plaintiff is further informed and believes, and thereon alleges, that at all times

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

9 **FACTUAL ALLEGATIONS**

10 21. During the relevant time frame, Defendants compensated Plaintiff and the Non-
11 Exempt Employees based upon an hourly wage.

12 22. Plaintiff and the Class Members were, and at all times pertinent hereto, have been
13 non-exempt employees within the meaning of the California Labor Code, and the implementing
14 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
15 the IWC Wage Orders and the Labor Code.

16 23. Plaintiff was employed as an hourly non-exempt Salesman from approximately May
17 1, 2024, through September 13, 2025. Plaintiff provided sales and customer services at Defendant's
18 location at 1201 Kettering Dr., Ontario, CA 91761.

19 24. The members of the putative class provided sales and customer services as
20 employees of Defendants throughout the state of California during the liability period.

21 25. Plaintiff typically worked six days a week, averaging over 45 hours a week.

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

25 27. All Class Members, including Plaintiff, are similarly situated in that they are all
26 subject to Defendants' uniform policies and systemic practices as specified herein.

27 28. Plaintiff and the Class Members were not properly compensated for all hours
28

1 worked, in part because they were frequently required to work off the clock.

2 29. In addition, the Class Members frequently worked in excess of eight (8) hours a
3 day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate
4 of time and one-half the employee's regular rate of pay per hour.

5 30. Defendants failed to properly calculate Plaintiff's and the Class Members' regular
6 rate of pay because Defendants failed to include all forms of compensation in the regular rate,
7 including commissions.

8 31. Class Members were regularly required to work shifts in excess of five hours
9 without being provided a lawful meal period and over ten hours in a day without being provided a
10 second lawful meal period as required by law.

11 32. Indeed, during the relevant time, as a consequence of Defendants' staffing and
12 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
13 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
14 uninterrupted 30-minute meal periods on shifts over five hours and second meal periods on shifts
15 over ten hours as required by law.

16 33. On information and belief, Plaintiff and Class Members did not waive their rights
17 to meal periods under the law.

18 34. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
19 periods.

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

24 36. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
25 should know, knew, and/or should have known that Plaintiff and the other Class Members were
26 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
27 were not receiving such compensation.

28 37. In addition, during the relevant time frame, Plaintiff and the Non-Exempt

1 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
2 period for every four hours worked or major fraction thereof, which is a violation of the Labor
3 Code and IWC wage order.

4 38. Defendants maintained and enforced scheduling practices, policies, and imposed
5 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
6 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
7 requisite rest periods were not timely authorized and permitted.

8 39. Moreover, Plaintiff and the Class Members were required to incur necessary
9 expenses in the discharge of their duties, including without limitation cellular phone expenses, but
10 were not reimbursed for such necessary expenses.

11 40. Despite the above-mentioned rest period violations, Defendants did not
12 compensate Plaintiff, and on information and belief, did not pay Class Members one additional
13 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
14 and the applicable IWC wage order, for each day on which lawful rest periods were not
15 authorized and permitted.

16 41. Defendants also maintained and enforced practices and policies to systematically
17 deprive Plaintiff and Class Members' vested vacation wages and sick pay owed, effectuating
18 unlawful forfeitures thereof. By way of example, Plaintiff alleges he was subjected to a "use-it-or-
19 lose-it" vacation policy, wherein vacation pay was unlawfully forfeited if not used by the end of
20 the year.

21 42. Defendants also failed to provide accurate, lawful itemized wage statements to
22 Plaintiff and the Class Members in part because of the above specified violations. In addition,
23 upon information and belief, Defendants omitted an accurate itemization of total hours worked,
24 the applicable hourly rates, the number of hours worked at each rate, the name and address of the
25 legal entity that is the employer, gross pay and net pay figures from Plaintiff, and the Class
26 Members' wage statements. Such actions were and continue to be in violation of the California
27 Labor Code and applicable IWC Wage Orders.

28 43. Defendants have also made it difficult to determine applicable hourly rates of pay,

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

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

14 45. Plaintiff and the Class Members are covered by applicable California IWC Wage
15 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
16 section 11000 *et seq.*

17 **CLASS ACTION ALLEGATIONS**

18 46. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
19 other person similarly situated, and thus seeks class certification under California Code of Civil
20 Procedure §382.

21 47. All claims alleged herein arise under California law for which Plaintiff seeks relief
22 as authorized by California law.

23 48. The **proposed class** is comprised of and defined as: **All persons currently or**
24 **formerly employed by Defendants, directly or indirectly, as non-exempt employees, however**
25 **titled, throughout the state of California within four (4) years prior to the filing of the**
26 **Complaint in this action until the resolution of this lawsuit. (hereinafter collectively referred**
27 **to as the “Class” or “Class Members”).**

28 49. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which

are composed of Class Members satisfying the following definitions:

a. All Class Members who were not paid at least minimum wage for all hours worked (collectively **“Minimum Wage Subclass”**);

b. All Class Members who were not accurately paid overtime for hours worked over eight in a day or over forty in a workweek (collectively **“Overtime Subclass”**);

c. All Class Members who worked more than five (5) hours in a workday and were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the **“First Meal Period Subclass”**);

d. All Class Members who worked more than ten (10) hours in a workday and were not provided with a timely, uninterrupted lawful second meal period of net thirty (30) minutes, and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the **“Second Meal Period Subclass”**);

e. All Class Members who worked more than three and a half hours in a workday and were not authorized and permitted to take a lawful net 10-minute rest period for every four (4) hours or major fraction thereof worked per day and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the **“Rest Period Subclass”**);

f. All Class Members who did not receive all owed wages at the time of separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the **“Waiting Time Subclass”**);

g. All Class Members who were not provided with accurate and complete itemized wage statements (hereinafter collectively referred to as the **“Inaccurate Wage Statement Subclass”**);

h. All Class Members who were employed by Defendants and subject to Defendant’s Unfair Business Practices (hereinafter collectively referred to as the **“Unfair Business Practices Subclass”**).

i. All Class Members who were not reimbursed for all necessary expenditures

(collectively “**Indemnification Subclass**”);

j. All Class Members who were not paid earned Vacation Wages as owed (collectively “**Vacation Pay Subclass**”).

50. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate, or if it should be deemed necessary by the Court or to further divide the Class Members into additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the Class Members or the Plaintiffs’ Class includes the members of each of the Subclasses.

51. As set forth in further detail below, this action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation, and the proposed Class and Subclasses are easily ascertainable through Defendants’ records.

a. Numerosity: The members of the Class and Subclasses are so numerous that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the Class is estimated to be over a hundred individuals. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants’ employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

b. The proposed class is easily ascertainable. The number and identity of the class members are determinable from Defendants’ payroll records and time records for each class member.

c. Commonality: There are common questions of law and fact as to the Class and Subclasses that predominate over questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

1) Whether Defendants were required to pay Class Members for hours worked during “shift change”;

1 2) Whether Defendants paid Class Members at least minimum wage for all
2 hours worked;
3 3) Whether Defendants knew or should have known that Class Members were
4 required to perform work off the clock;
5 4) Whether Defendants accurately calculated and paid all Class Members
6 overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8)
7 hours per day and/or forty (40) hours per week;
8 5) Whether Defendants had a policy and practice of providing lawful, timely
9 meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare
10 Commission (“IWC”) wage order;
11 6) Whether Defendants on-duty meal periods were lawful;
12 7) Whether Defendants had a policy and practice of complying with Labor
13 Code section 226.7 and IWC Wage Order on each instance that a lawful meal period was not
14 provided;
15 8) Whether Defendants failed to authorize and permit a lawful, net 10-minute
16 rest period to the Class Members for every four (4) hours or major fraction thereof worked;
17 9) Whether Defendants had a policy and practice of complying with Labor
18 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
19 provided;
20 10) Whether Defendants failed to timely pay all wages upon separation in
21 accordance with Labor Code sections 201-202;
22 11) Whether Defendants failed to reimburse employees for necessary expenses
23 in accordance with Labor Code section 2802;
24 12) Whether Defendants paid vested vacation wages to Class Members;
25 13) Whether Defendants omitted required information from itemized wage
26 statements;
27 14) Whether Defendants failed to maintain accurate records of Class Members'
28 earned wages, work periods, meal periods and deductions;

1 15) Whether Defendants engaged in unfair competition in violation of section
2 17200 et seq. of the Business and Professions Code;

3 16) Whether Defendants' conduct was willful and/or reckless;

4 17) Whether Defendants failed to provide accurate itemized wage statements in
5 violation of Labor Code § 226; and

6 18) The appropriate amount of damages, restitution, and/or monetary penalties
7 resulting from Defendants' violations of California law.

8 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the
9 interests of each member of the Class and Subclasses with whom he has a well-defined community
10 of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by
11 any member of the Class and/or Subclasses, and the relief sought is typical of the relief which
12 would be sought by each member of the Class and/or Subclasses in separate actions. All members
13 of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful
14 meal and rest periods, failure to provide accurate wage statements, failure to timely pay wages at
15 termination, failure to pay minimum wages, failure to reimburse necessary expenses, and failure to
16 accurately pay all wages earned including all owed premium, overtime, and vacation wages, all due
17 to Defendants' policies and practices that affected each member of the Class and/or Subclasses
18 similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to
19 each member of the Class and/or Subclasses.

20 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
21 interests of each member of the Class and/or Subclasses with whom he has a well-defined
22 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
23 he has an obligation to make known to the Court any relationships, conflicts, or differences with
24 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
25 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
26 versed in the rules governing class action discovery, certification, litigation, and settlement and
27 experienced in handling such matters. Other former and current employees of Defendants may also
28 serve as representatives of the Class and Subclasses if needed.

1 f. Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve economies of time, effort,
3 judicial resources, and expense, which would not be achieved with separate lawsuits. The
4 prosecution of separate actions by individual members of the Class and/or Subclasses would create
5 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
6 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
7 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
8 disposition of their interests through actions to which they were not parties. Thus, a class action is
9 superior to other available means for the fair and efficient adjudication of this controversy because
10 individual joinder of all Class Members is not practicable, and questions of law and fact common
11 to the Class predominate over any questions affecting only individual Class Members. Each
12 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
13 unlawful policies and practices, including Defendants' failure to provide lawful meal and rest
14 periods, failure to pay minimum wages, failure to provide accurate wage statements, failure to
15 timely pay wages at termination, failure to reimburse necessary expenses, and failure to accurately
16 pay all wages earned including all owed premium and overtime wages, all due to Defendants'
17 policies and practices that affected each member of the Class and/or Subclasses similarly. Class
18 action treatment will allow those similarly situated persons to litigate their claims in the manner
19 that is most efficient and economical for both parties and the judicial system. Plaintiff is unaware
20 of any difficulties that are likely to be encountered in the management of this action that would
21 preclude its maintenance as a class action.

22 g. Public Policy Considerations: Employers in the state of California violate
23 employment and labor laws every day. However, current employees are often afraid to assert their
24 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
25 because they believe their former employers may damage their future endeavors through negative
26 references and/or other means. The nature of this action allows for the protection of current and
27 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
28 California have a significant interest in ensuring employers comply with California's labor laws

1 and in ensuring those employers who do not are prevented from taking further advantage of their
2 employees.

3 **CLASS ACTION CLAIMS**

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF CAL. LABOR CODE §§ 1194, 1197, AND 1197.1**

6 **Unpaid Minimum Wages**

7 **(By Plaintiff and the Class Against Defendants)**

8 52. Plaintiff incorporates each and every allegation set forth in all of the foregoing
9 paragraphs as if fully set forth herein.

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

13 54. Labor Code section 1194(a) provides that notwithstanding any agreement to work
14 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
15 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
16 of the full amount of this minimum wage or overtime compensation, including interest thereon,
17 reasonable attorney's fees, and costs of suit.

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

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

24 57. The applicable wage orders and California Labor Code sections 1197 and 1182.12
25 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
26 state law.

27 58. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
28 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid

1 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
2 equal to the unpaid wages and interest accrued thereon.

3 59. During all relevant periods, the California Labor Code and wage orders required that
4 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
5 hours worked.

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

9 61. At all times relevant, Plaintiffs and Class Members consistently worked hours for
10 which they were not paid because Defendants frequently required Plaintiffs and the Class Members
11 to work off the clock.

12 62. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
13 Class Members were working off the clock and that they should have been paid for this time.

14 63. In addition, Defendants failed to pay at least minimum wage for all hours worked
15 because, upon information and belief, Defendants rounded hours worked against Plaintiff and the
16 Class Members' interests.

17 64. Defendant's policy and practice of not paying all minimum wages violates
18 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
19 applicable wage order.

20 65. Due to Defendants' violations of the California Labor Code and wage orders,
21 Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their
22 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-
23 judgment and post-judgment interest, as well as liquidated damages.

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1 clock—some of these hours were over eight (8) hours in one (1) workday or in excess of forty (40)
2 hours in a workweek and should have been paid at the overtime rate.

3 72. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
4 Class Members were working off the clock and that they should have been paid for this time.

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

8 74. As a result, Defendants failed to pay Plaintiff and the Class members earned
9 overtime wages and such employees suffered damages as a result.

10 75. Defendants knew or should have known Plaintiff and the Class Members were
11 undercompensated as a result of these practices.

12 76. Due to Defendant's violations of the California Labor Code, Plaintiff and the Class
13 members are entitled to recover from Defendants their unpaid overtime wages, reasonable
14 attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory
15 penalties, and liquidated damages.

16 **THIRD CAUSE OF ACTION**

17 **VIOLATION OF CAL. LABOR CODE §§ 226.7 AND 512(A)**

18 **Unpaid Meal Period Premiums**

19 **(By Plaintiff and the Class Against All Defendants)**

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

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

27 79. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
28 for a work period of more than ten (10) hours without providing a second meal break of not less

1 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
2 break may only be waived by mutual consent, and if the employee did not waive his or her first
3 meal period, and the employee's work day will not exceed twelve hours.

4 80. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
5 provide Plaintiff and Class Members timely and uninterrupted first meal periods of not less than
6 thirty (30) minutes within the first five hours of a shift.

7 81. For the four (4) years preceding the filing of this lawsuit, Defendants also failed to
8 provide Plaintiff and Class Members timely and uninterrupted second meal periods of not less than
9 thirty (30) minutes on shifts longer than ten hours.

10 82. Indeed, during the relevant time, as a consequence of Defendants' staffing and
11 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
12 Plaintiff and the Class Members were not provided with legally required meal periods.

13 83. On information and belief, Plaintiff and Class Members did not waive their rights
14 to meal periods under the law.

15 84. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
16 periods.

17 85. Plaintiff and the Class Members were not paid one hour of pay at their regular rate
18 for each day that a first or second meal period was not lawfully provided.

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

21 87. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
22 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
23 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

24 88. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
25 represent have been deprived of premium wages in amounts to be determined at trial, and are
26 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
27 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
28 section 3287.

FOURTH CAUSE OF ACTION
VIOLATION OF CAL. LABOR CODE § 226.7

Unpaid Rest Period Premiums
(By Plaintiff and the Class Against All Defendants)

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

90. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized 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 worked or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages."

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

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

93. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Member's employment with Defendants, Defendants failed and refused to authorize and permit Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

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

95. By their failure to authorize and permit Plaintiff and the Class Members to take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction

1 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and
2 three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members
3 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
4 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
5 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

6 96. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
7 represent have been deprived of premium wages in amounts to be determined at trial, and are
8 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
9 under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

10 **FIFTH CAUSE OF ACTION**

11 **VIOLATION OF CAL. LABOR CODE §§ 201, 202, AND 203**

12 **Untimely Final Wages**

13 **(By Plaintiff and the Class Against All Defendants)**

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

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

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

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

26 101. More than thirty (30) days have passed since affected Waiting Time Subclass
27 Members have left Defendants' employ, and on information and belief, they have not received
28 payment pursuant to Labor Code § 203.

1 102. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
2 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

3 **SIXTH CAUSE OF ACTION**

4 **VIOLATION OF CAL. LABOR CODE § 226(A)**

5 **Failure to Provide Accurate Wage Statements**

6 **(By Plaintiff and the Class Against All Defendants)**

7 103. Plaintiff repeats and incorporates herein by reference each and every allegation set
8 forth above, as though fully set forth herein.

9 104. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
10 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
11 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
12 when wages are paid by personal check or cash, an accurate itemized statement in writing
13 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
14 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
15 name of the employee and only the last four digits of his or her social security number or an
16 employee identification number other than a social security number, (8) the name and address of
17 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
18 pay period and the corresponding number of hours worked at each hourly rate by the
19 employee....".

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

25 106. Labor Code section 1174 of the California also requires Defendants to maintain
26 and preserve, in a centralized location, among other items, records showing the names and
27 addresses of all employees employed and payroll records showing the hours worked daily by, and
28 the wages paid to, its employees. On information and belief and based thereon, Defendants have

1 knowingly and intentionally failed to comply with Labor Code section 1174, including by
2 implementing the policies and procedures and committing the violations alleged in the preceding
3 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
4 unlawful pursuant to Labor Code section 1175.

5 107. Defendants have failed to record many of the items delineated in applicable
6 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
7 1174, including by virtue of the fact that each wage statement which failed to accurately
8 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
9 meal and rest periods, or which failed to include compensation for all minimum wages earned or
10 overtime hours worked, was an inaccurate wage statement.

11 108. On information and belief, Defendants failed to implement and preserve a lawful
12 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
13 periods owed to employees, as required for Non-Exempt Employees under California Labor Code
14 section 226 and applicable California Wage Orders. In order to determine if they had been paid
15 the correct amount and rate for all hours worked, Plaintiff and Class Members have been, would
16 have been, and are compelled to try to discover the required information missing from their wage
17 statements and to perform complex calculations in light of the inaccuracies and incompleteness of
18 the wage statements Defendants provided to them.

19 109. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
20 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
21 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
22 required information. Specifically, Defendants have also omitted accurate itemizations of total
23 hours worked, the name and address of the legal entity that is the employer, and gross pay from
24 Plaintiff and the Class Members' wage statements. In addition, Defendants have failed to provide
25 accurate itemized wage statements as a consequence of the above-specified violations for failure
26 to accurately pay all wages owed, accurately record all hours worked, and failure to pay meal and
27 rest period premiums as required by law.

28 110. Moreover, upon information and belief, as a pattern and practice, in violation of

1 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
2 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
3 Statement Class, including but not limited to, beginning and ending of each work period, meal
4 period and split shift interval, the total daily hours worked, and the total hours worked per pay
5 period and applicable rates of pay.

6 111. Plaintiff and the members of the Wage Statement Class have suffered injury as a
7 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
8 Class in that the members of the Wage Statement Class were not timely provided written accurate
9 itemized statements showing all requisite information, such that the members of the Wage
10 Statement Class were misled by Defendants as to the correct information regarding various items,
11 including but not limited to the identity of the employer, total hours worked by the employee,
12 gross pay, net wages earned and all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate.

14 112. Pursuant to Labor Code section 226, and in light of Defendants' violations
15 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
16 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

17 **SEVENTH CAUSE OF ACTION**

18 **VIOLATION OF CAL. BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***

19 **Unfair Competition**

20 **(By Plaintiff and the Class Against All Defendants)**

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

23 114. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
24 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
25 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
26 the meaning of the California Code of Civil Procedure § 1021.5.

27 115. Defendants' policies, activities, and actions as alleged herein are violations of
28 California law and constitute unlawful business acts and practices in violation of California

1 Business and Professions Code §§ 17200, *et seq.*

2 116. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
3 predicated on the violation of any state or federal law.

4 117. The state law violations, including violations of the relevant IWC Wage Order,
5 detailed herein above are the predicate violations for this cause of action. By way of example only,
6 in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with
7 timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was
8 not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders.
9 Defendants further violated the law through their policies of failing to fully and accurately
10 compensate Plaintiff and the Class Members for all hours worked, including minimum wages and
11 overtime as well as failing to provide accurate itemized wage statement as specified above.

12 118. Plaintiff and the Class Members have been personally aggrieved by Defendants'
13 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

14 119. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
15 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
16 during a period that commences four (4) years prior to the filing of this complaint; an award of
17 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
18 costs.

19 **EIGHTH CAUSE OF ACTION**

20 **VIOLATION OF CAL. LABOR CODE §§ 2800 AND 2802**

21 **Failure to Reimburse Necessary Business Expenses**

22 **(By Plaintiff and the Class Against All Defendants)**

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

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

27 122. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members
28 for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

123. Plaintiff and the members of the Indemnification Class were required to incur expenses in the performance of their assigned job duties. For example, Plaintiff and the Indemnification Class Members were required to incur numerous out of pocket expenses, including without limitation, cellular phone expenses, in direct consequence of the discharge of their duties.

124. Upon information and belief, the Defendants did not reimburse Plaintiff or the Plaintiff's subclass for such expenses.

125. As a result of the unlawful acts of Defendants, Plaintiff and the Subclass Members have been deprived of unreimbursed sums in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §2802.

NINTH CAUSE OF ACTION

VIOLATION OF CAL. LABOR CODE § 227.3

Failure To Pay Earned Vacation Wages

(By Plaintiff and Vacation Pay Subclass Against All Defendants)

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

127. Upon information and belief, Defendants employ policies that provide for vacation/PTO to Plaintiff and the Class Members.

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

129. Labor Code section 227.3 requires employees to pay terminated employees for an unused vacation time that they have occurred at their final rate of pay.

130. Earned vacation time is considered wages under California law. Vacation pay accrues as it is earned, and cannot be forfeited. *Suarez v. Plastic Dress Up* (1982) 31 C.3d 774. Thus, Plaintiff and Class Members earned vacation/PTO wages while employed by Defendants.

1 However, Defendants effectuated an unlawful forfeiture of Plaintiff and Class Members earned and
2 vested vacation/PTO wages.

3 131. Defendants employed policies and procedures which ensured Plaintiff and Class
4 Members would not receive their accrued and vested vacation/PTO wages, and/or such wages were
5 not paid at the correct rate as required by Labor Code section .

6 132. Upon information and belief, Defendants failed to pay out Plaintiff and Class
7 Members' vacation pay, and/or failed to do so fully, thus effectuating an unlawful forfeiture of
8 earned vacation and or/failure and refusal to pay earned vacation/PTO.

9 133. Pursuant to the Labor Code and applicable IWC Wage Orders, Plaintiff and the
10 Class Members seek their earned and vested vacation/PTO wages, plus interest thereon, for the four
11 years preceding the filing of this Action, as well as attorneys' fees and costs.

12 **TENTH CAUSE OF ACTION**

13 **PENALTIES UNDER PRIVATE ATTORNEYS' GENERAL ACT,**

14 **LABOR CODE SECTION 2698 ET SEQ.**

15 (By Plaintiff and Aggrieved Employees Against Defendants)

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

18 129. Plaintiff gave timely written notice by online transmission to the LWDA and by
19 certified mail to Defendants of Defendants' violations of numerous provisions of the California
20 Labor Code and the IWC Wage Orders as alleged in this Complaint. All fees were paid as
21 required by statute.

22 130. Plaintiff is "aggrieved employee" as defined in Labor Code Section 2699(a), as he
23 was employed by Defendants during the statutory period and suffered one or more of the Labor
24 Code violations set forth herein. He seeks to recover on behalf of himself and all other current
25 and former aggrieved employees of Defendants the civil penalties provided by PAGA, plus
26 reasonable attorneys' fees and costs.

27 131. 65 days have passed, and no response has been received from the LWDA.
28 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

1 132. Plaintiff has exhausted all administrative procedures required of her under Labor
2 Code §§ 2698, 2699, 2699.3, and as a result, are justified as a matter of right in bringing forward
3 this cause of action.

4 133. Pursuant to Labor Code section 2699(a), Plaintiff seeks to recover civil penalties
5 for which Defendants are liable due to numerous Labor Code violations as set forth in this
6 Complaint.

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

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

13 136. Specifically, Plaintiff, on behalf of himself and the Aggrieved Employees, seeks
14 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 15 a. Defendants' failure to comply with the requirement of Labor Code §1182.12,
16 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
17 hour worked;
- 18 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
19 1197, 1198, and Wage Orders to accurately pay all wages earned, including
20 overtime, double time and commissions;
- 21 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
22 wages after demand was made;
- 23 d. Defendants' failure to comply with the requirement of Labor Code §§204 and
24 210 to pay, without condition and within the time set by the applicable article,
25 all wages, or parts thereof;
- 26 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to
27 pay wages due;

- 1 f. Defendants' failure to comply with the requirement of Labor Code §§201 and
2 202 to pay wages due to former employees;
- 3 g. Defendants' failure to comply with the requirement of Labor Code §226.7, 512,
4 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-
5 duty meal periods;
- 6 h. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
7 and IWC Wage Orders to pay one hour of premium pay at the regular rate for
8 each lawful meal break that was not provided;
- 9 i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
10 and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- 11 j. Defendants' failure to comply with the requirement of Labor Code §226.2 to
12 separately compensate commission earning employees for rest and recovery
13 time at the requisite rate;
- 14 k. Defendants' failure to comply with the requirement of Labor Code §§226.7,
15 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate
16 for each statutorily required rest break that was not lawfully authorized and
17 permitted;
- 18 l. Defendants' failure to reimburse necessary expenses in violation of Labor Code
19 § 2802;
- 20 m. Defendants' failure to provide accurate compliant wage statements under Labor
21 Code section 226;
- 22 n. Defendants' failure to maintain required records in violation of Labor Code
23 §226, 1174, and Wage Orders;
- 24 o. Defendant's failure to pay earned vacation wages in violation of Labor Code §
25 227.3
- 26 p. Defendants' failure to provide paid sick days and failure to pay sick leave at the
27 proper rate of pay under Labor Code § 246;
- 28

1 q. Defendants' failure to provide one day of rest in seven in violation of Labor
2 Code sections 551-552, and 1198;

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

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

1 committed, one hundred dollars (\$100) for each underpaid employee for each pay
2 period for which the employee is underpaid; and for each subsequent violation of
3 the same offense, two hundred fifty dollars (\$250) for each underpaid employee for
4 each pay period for which the employee is underpaid regardless of whether the
5 initial violation was intentionally committed.

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

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

12 140. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
13 thirty-five percent (35%) of all penalties due under California law, interest, attorneys' fees and
14 costs.

15 141. Under Labor Code § 2699, the State of California should be awarded sixty-five percent
16 (65%) of the penalties due under California law.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

20 **Class Certification**

- 21 1. That this action be certified as a class action;
22 2. That Plaintiff be appointed as the representatives of the Class;
23 3. That Plaintiff be appointed as the representatives of the Subclasses; and
24 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

25 **On the First Cause of Action**

26 **(Unpaid Minimum Wages)**

- 27 1. For the unpaid balance of the full amount of any minimum wages, and regular wages
28 owed, as well as interest thereon,

2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Unpaid Overtime)

1. For the unpaid balance of the full amount of any overtime wages owed, as well as interest thereon,

2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Unpaid Meal Period Premiums)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;

2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Unpaid Rest Period Premiums)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and

2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

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1 **On the Fifth Cause of Action**

2 **(Untimely Final Wages)**

- 3 1. For unpaid wages;
- 4 2. For penalties pursuant to Labor Code § 203;
- 5 3. For interest;
- 6 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 7 5. For such other and further relief as the Court deems proper.

8 **On the Sixth Cause of Action**

9 **(Failure to Provide Accurate Wage Statements)**

- 10 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
- 11 2. For reasonable attorneys' fees and costs; and
- 12 3. For such other and further relief as the Court deems proper;

13 **On the Seventh Cause of Action**

14 **(Unfair Competition)**

15 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of

16 sums to Plaintiff and Class Members for the Defendants' past failure to pay overtime and regular

17 wages, for Defendants' past failure to reimburse necessary expenses, and for premium wages for

18 meal and rest periods that were not provided to Plaintiff and Class Members over the last four (4)

19 years in an amount according to proof;

20 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to

21 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;

22 3. For pre-judgment interest on any unpaid overtime wages due from the day that such

23 amounts were due;

24 4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to

25 recover under the Labor Code; and

- 26 5. For such other and further relief as the Court deems proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this matter.

Respectfully submitted,

EMPLAW, LLP



Dated: January 8, 2026

Christina M. Lucio, Esq.

Mitchell J. Murray, Esq.

Samantha A. Jones, Esq.

Attorneys for Plaintiff MOISES VARELA, individually,
and on behalf of himself and all others similarly situated