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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

VICTOR ROJAS, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

BEST CHEER STONE INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00016975-CU-OE-CTL

Assigned for All Purposes to:
Hon. Katherine Bacal, Dept. C-69

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods or Compensation;
3. Failure to Permit Rest Periods or Provide Compensation;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Waiting Time Penalties;
6. Failure to Reimburse Business Expenses;
7. Violation of the Unfair Competition Law; and
8. Violation of the Private Attorneys General Act of 2004

Action Filed: April 24, 2023
Trial Date: None Set

DEMAND FOR JURY TRIAL

1 Plaintiff VICTOR ROJAS (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, brings this First Amended Class and Representative Action Complaint (“Complaint”) against
3 Defendants BEST CHEER STONE INC., and DOES 1 through 50, inclusive (collectively,
4 “Defendants”), and alleges as follows:

5 **INTRODUCTION**

6 1. This proposed class action, pursuant to California Code of Civil Procedure section 382,
7 is brought by Plaintiff individually and on behalf of all current and former non-exempt employees
8 employed by Defendants in California during the Class Period (collectively the “Class” or “Class
9 Members”). The term Class Period is defined as four (4) years prior to the filing of this action to the
10 date of class certification.

11 2. Plaintiff also brings this representative action pursuant to the Private Attorneys General
12 Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”), against Defendants, on behalf of himself
13 individually and other aggrieved employees who are and were employed by Defendants as non-exempt
14 employees throughout California during the PAGA Period (the “aggrieved employees”). The term
15 PAGA Period is defined as one (1) year prior to Plaintiff’s initial notice of Labor Code violations to
16 the Labor and Workforce Development Agency (“LWDA”) and Defendants until judgment.

17 3. This proposed class and representative action seeks, *inter alia*, unpaid wages (including
18 minimum, regular, overtime, and double time wages, sick pay, and vacation pay), compensation for
19 non-compliant meal periods and rest breaks, waiting time penalties, itemized wage statement penalties,
20 civil penalties, business expense reimbursements, liquidated damages, interest, reasonable attorneys’
21 fees, and costs. Plaintiff’s action is brought under, *inter alia*, the California Industrial Welfare
22 Commission (“IWC”) Wage Orders and applicable provisions of the California Code of Regulations,
23 California Business & Professions Code sections 17200 *et seq.*, California Civil Code section 3289,
24 California Code of Civil Procedure section 1021.5, and California Labor Code (“Labor Code”)
25 sections 201-204, 206, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5,
26 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, 2800, and 2802.

27 4. Under the California Unfair Competition Law, Business and Professions Code
28 sections 17200 *et seq.* (“UCL”), and pursuant to the class action procedures provided for in this statute,

1 Plaintiff, on behalf of himself and the proposed Class, seeks declaratory relief, injunctive relief, and
2 restitution of all benefits Defendants have received from their employees due to their unlawful
3 business practices, including but not limited to, their failure to timely provide minimum, regular,
4 overtime, and double time compensation due for all hours worked, failure to provide vacation pay and
5 sick pay at the proper rate of pay, failure to reimburse business expenses, failure to provide compliant
6 meal periods and rest breaks to their employees or compensation in lieu thereof, and failure to provide
7 accurate itemized wage statements.

8 **JURISDICTION AND VENUE**

9 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
10 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
11 in all cases except those given to other trial courts. All claims alleged herein arise under California
12 law for which Plaintiff seeks relief authorized by California law. Further, this is a class action pursuant
13 to California Code of Civil Procedure section 382 and representative action under PAGA. As such,
14 the monetary damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the
15 minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.
16 The Court also has jurisdiction over certain causes of action pursuant to California Business &
17 Professions Code sections 17203 and 17204, which provide for exclusive jurisdiction for enforcement
18 of this statute in any court of competent jurisdiction.

19 6. This Court has jurisdiction over all Defendants because each Defendant is a citizen of
20 California, a corporation or association organized under the laws of the State of California, an
21 association authorized to do business in California and registered with the California Secretary of
22 State, does sufficient business in California, has sufficient minimum contacts with California, and/or
23 intentionally avails itself of the laws and markets of California through the promotion, sale, marketing
24 and distribution of its products and/or services in California to render the exercise of jurisdiction by
25 the California courts permissible.

26 7. Venue in San Diego County is proper under California Business & Professions Code
27 section 17203 and California Code of Civil Procedure section 395.5 because a substantial part of
28 Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County, Defendants

1 had and have ongoing projects in this County, Defendants conduct substantial business in this County,
2 Defendants' liability arose in this County, and/or Defendants reside, transact business, maintain
3 offices, and/or have an agent or agents in this County. The relief requested is within the jurisdiction
4 of this Court.

5 **PARTIES**

6 8. Plaintiff is a California citizen. Defendants employed Plaintiff as a non-exempt
7 employee during the Class Period. Plaintiff's employment with Defendants ended within one (1) year
8 of the filing of this action. Plaintiff's job duties included, *inter alia*, loading and unloading items (e.g.,
9 stone, cabinets, quartz, marble, granite, tiles, etc.) from vehicles, assisting customers with purchases,
10 placing items and materials on display, and driving and delivering items and materials to various
11 worksites (e.g., San Diego, Santa Barbara, Santa Maria, Bakersfield, etc.) in Defendants' vehicles.
12 Plaintiff worked at Defendants' worksites located throughout Southern California, including San
13 Diego County.

14 9. Plaintiff is informed, believes and thereon alleges that, at all relevant times Defendant
15 BEST CHEER STONE INC. ("BCSI") was and is a California corporation doing business in the State
16 of California. BCSI owns and operates multiple retail and/or distribution centers throughout
17 California, including a retail and/or distribution center located at 8515 Miramar Place, San Diego,
18 California 92121. BCSI is a distributor, retailer, and installer of countertops, kitchen cabinets, flooring,
19 and other materials and operates in California and Texas, among other locations. Plaintiff is further
20 informed, believes and thereon alleges that, at all relevant times, BCSI regularly conducted and
21 conducts business within the State of California and derives substantial revenues from services
22 performed in California. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
23 BCSI was and is an employer subject to California state wage and hour laws.

24 10. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter
25 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers,
26 whose employees were and are engaged throughout this County and the State of California.

27 11. Defendants continue to employ non-exempt employees within California.

28 12. Plaintiff is unaware of the true names and capacities of those defendants identified as

1 DOES 1 through 50. Therefore, Plaintiff identifies those defendants fictitiously. Plaintiff is informed,
2 believes and thereon alleges that at all relevant times each DOE defendant was a parent, sister, or
3 related corporate entity of defendants, or an owner, employee or agent of defendants, and each related
4 entity, and was acting with the knowledge and authorization of each of the other defendants. Plaintiff
5 will seek to amend this Complaint to allege the true names and capacities of each DOE defendant
6 when their names have been ascertained and identified. Plaintiff is informed, believes and thereon
7 alleges that each of the defendants sued as DOES 1 through 50 participated in, received the benefit of,
8 or was in some way responsible for one or more of the wrongful acts and omissions and some portion
9 of the damages alleged herein.

10 13. Plaintiff is informed, believes and thereon alleges that at all times material hereto, each
11 defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out
12 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
13 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
14 employer and/or joint employer of Plaintiff and the Class Members.

15 14. Plaintiff is informed, believes and thereon alleges that defendants, each and all of them,
16 at all times material hereto, were the joint employers, parent companies, successor companies,
17 predecessors in interest, affiliates, agents, employees, servants, joint venturers, directors, fiduciaries,
18 representatives, and/or co-conspirators of each of the remaining defendants. Defendants, unless
19 otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within
20 the course and scope of said relationship(s), and are a proximate cause of Plaintiff's damages as herein
21 alleged.

22 15. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
23 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality and
24 separateness between the individual and the corporation does not exist, as Defendants, and DOES 1
25 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned herein were
26 mere shells, instrumentalities and conduits through which DOES 1 through 50, inclusive, carried out
27 their business in the business name, exercising complete control and dominance over such business;
28 (2) that Defendants were conceived, intended and used by DOES 1 through 50, inclusive, as devices

1 to avoid individual liability and in place of Defendants, and DOES 1 through 50, inclusive, and were
2 without the financial solvency and responsibility required by law; and (3) that all of the assets of the
3 Defendants have been transferred to DOES 1 through 50, inclusive, or some other individual or entity
4 which he or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants,
5 leaving Defendants with no assets. Further, Plaintiff is informed, believes and thereon alleges, that
6 there exists a principal-agency relationship between and among Defendants.

7 16. At all relevant times herein, Defendants were agents of each other and acting within
8 the course and scope of their agency.

9 **CLASS ALLEGATIONS AND FACTUAL BACKGROUND**

10 17. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this action
11 individually and as a class action on behalf of a proposed Class defined as follows:

12 Class

13 All current and former non-exempt employees employed by Defendants in the State of
14 California within four (4) years prior to the commencement of this action to the date of
15 class certification.

16 18. The Class is also comprised of the following Subclass:

17 Waiting Time Subclass

18 Those members of the Class who separated from their employment with Defendants
19 within three (3) years prior to the commencement of this action to the date of class
20 certification.

21 19. Plaintiff reserves the right pursuant to California Rules of Court, Rule 3.764 and 3.765,
22 to amend or modify the respective definitions of the Class and/or Subclasses to provide greater
23 specificity and/or further division into subclasses or limitation to particular issues based on further
24 investigation and discovery.

25 20. This action is brought, and may properly be maintained, as a class action pursuant to
26 California Code of Civil Procedure section 382 because there is a well-defined community of interest
27 in the litigation, and the proposed class is easily ascertainable. This action presents questions of
28 common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance, and

1 superiority requirements of this provision.

2 21. Through this action, Plaintiff alleges Defendants have consistently maintained and
3 enforced against Plaintiff and Class Members unlawful employment practices and policies which
4 violate the Labor Code and IWC Wage Orders.

5 22. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
6 Defendants failed to pay Plaintiff and other Class Members sick pay, vacation pay, and minimum,
7 regular, overtime, and/or double time wages for all hours worked at the legally mandated rates. During
8 the Class Period, Plaintiff and other Class Members regularly worked more than eight (8), 10, and/or
9 12 hours per workday, over 40 hours per workweek, and/or over eight (8) hours on the seventh
10 consecutive day of work. Specifically, Defendants failed to pay overtime and double time at the proper
11 rates of pay. For example, Defendants would apply Plaintiff's and Class Members' holiday pay, which
12 was paid at their regular rate of pay, to overtime and/or double time hours worked. As such, Defendants
13 failed to pay overtime and double time at the proper rate of pay and failed to provide proper paid time
14 off. Further, Plaintiff and other Class Members were required to work off-the-clock by responding to
15 work related calls before or after their shifts (e.g., calls from management related to scheduling and
16 assignments) without proper compensation. In addition, Defendants rounded Plaintiff's and other
17 Class Members' time worked, thereby depriving them of compensation for time worked during their
18 shifts. Defendants' rounding practice systematically undercompensated Plaintiff and other Class
19 Members and favored Defendants rather than the employees. Defendants also failed to include
20 additional remunerations, including but not limited to, bonuses, commissions, and/or other incentive
21 pay when calculating Plaintiff's and the Class Members' regular rate of pay for purposes of paying
22 overtime, double time, meal and rest premiums, vacation pay, and paid sick leave. As such, Defendants
23 failed to pay Plaintiff and other Class Members vacation pay, sick pay, and minimum, regular,
24 overtime, and double time wages, for all hours worked in violation of the Labor Code and applicable
25 IWC Wage Orders.

26 23. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
27 Defendants failed to provide timely off-duty 30-minute meal periods within the appropriate time
28 intervals to Plaintiff and Class Members as required by Labor Code section 512 and section 11 of the

1 applicable Wage Order. Specifically, Plaintiff and other Class Members frequently worked through
2 their meal periods, or had their meal periods shortened, interrupted, late, restricted to the worksite,
3 and/or missed altogether due to Defendants' policy and practice of prioritizing work demands over
4 providing compliant breaks. For example, Plaintiff and Class Members were required to work through
5 meal periods, had them interrupted with work related tasks, and/or restricted to the worksite during
6 meals. Further, Plaintiff's and Class Members' meal periods were regularly taken after the fifth hour
7 of work since they were required to prioritize their tasks. Defendants also failed to provide second
8 meal periods when Plaintiff and Class Members worked over 10 hours per workday. Despite the
9 aforementioned meal period violations, Defendants failed to compensate Plaintiff and Class Members
10 with an additional hour of pay at their regular rate for every day in which they suffered a meal period
11 violation. Accordingly, Defendants failed to provide Plaintiff and Class Members with timely,
12 uninterrupted off-duty meal periods for at least 30 minutes when they worked more than five (5) hours
13 and/or 10 hours in a workday, and failed to compensate Plaintiff and Class Members with an additional
14 hour of pay at their regular rate of pay for every day in which they were denied a compliant meal
15 period in violation of the Labor Code and applicable IWC Wage Orders.

16 24. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
17 Defendants failed to authorize or permit ten-minute (10) rest periods for every four (4) hours worked
18 or major fraction thereof. Specifically, Plaintiff and other Class Members regularly had their rest
19 breaks shortened, interrupted, restricted to the worksite, and/or missed altogether due to Defendants'
20 policy and practice of prioritizing work demands over taking compliant breaks and failing to
21 implement a compliant rest break policy and/or practice. Defendants also failed to adopt and
22 implement a practice of providing third rest breaks when Plaintiff and Class Members worked over 10
23 hours per workday. Notwithstanding the above rest break violations, Defendants failed to compensate
24 Plaintiff and Class Members with an additional hour of pay at their regular rate for every day in which
25 they suffered a rest period violation. Accordingly, Defendants violated the Labor Code and the
26 applicable IWC Wage Orders.

27 25. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
28 Defendants failed to reimburse Plaintiff and Class Members for all necessary business expenses

1 incurred for Defendants' benefit. For example, Plaintiff and Class Members were required to use their
2 personal cell phones for work purposes, such as communicating with Defendants' supervisors and
3 navigating to worksites (e.g., using GPS navigation) without reimbursement. Further, Defendants
4 required Plaintiff and other Class Members to wear and maintain uniforms (e.g., shirt with BCSI's
5 logo which states "BC Stone") that became heavily soiled while performing their job duties. Plaintiff
6 and other Class Members separately washed, cleaned, and otherwise maintained their heavily soiled
7 uniforms without reimbursement. Accordingly, Defendants violated the Labor Code and applicable
8 IWC Wage Orders.

9 26. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
10 Defendants willfully failed to timely pay all wages due to Plaintiff and the Waiting Time Subclass
11 upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff and
12 Waiting Time Subclass Members were not paid all wages (including vacation pay and minimum,
13 regular, overtime, and double time wages), business expense reimbursements, meal period premiums,
14 and/or rest period premiums within the required time period in violation of the Labor Code and
15 applicable IWC Wage Orders.

16 27. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
17 Defendants failed to provide Plaintiff and Class Members with accurate itemized wage statements that
18 accurately reported, among other things, the gross and net wages earned, the total hours worked, all
19 applicable hourly rates in effect during the pay period, and the corresponding number of hours worked
20 at each hourly rate. As a result, Defendants violated the requirements of the Labor Code and applicable
21 IWC Wage Orders.

22 28. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
23 described throughout this Complaint were willful.

24 **NUMEROSITY**

25 29. The Class is so numerous that joinder of all of its members is impracticable. While the
26 exact number and identities of Class Members are unknown to Plaintiff at this time and can only be
27 ascertained through appropriate discovery, Plaintiff is informed, believes and thereon alleges that the
28 Class consists of more than 100 persons.

30. A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Class are so numerous that joinder of all members is impractical, if not impossible. The identity of Class Members can be ascertained by analysis of Defendants' employee and payroll records.

COMMONALITY

31. Common questions of fact and law exist as to all members of the Class that predominate over any questions affecting only individual Class Members. These common legal and factual questions include, but are not limited to, the following:

- (a) Whether Defendants paid Plaintiff and Class Members all wages (including minimum, regular, overtime, and double time wages) for all hours worked;
- (b) Whether Defendants adjusted Plaintiff and Class Members' time worked;
- (c) Whether Defendants paid the proper rate of pay for overtime, double time, meal and rest period premiums, vacation pay, and sick pay;
- (d) Whether Defendants unlawfully rounded Plaintiff's and Class Members' time worked;
- (e) Whether Defendants required Plaintiff and Class Members to work off-the-clock without proper compensation;
- (f) Whether Defendants provided Plaintiff and Class Members with compliant meal periods or paid compensation in lieu thereof;
- (g) Whether Defendants authorized and permitted compliant rest breaks to Plaintiff and Class Members or paid compensation in lieu thereof;
- (h) Whether Defendants failed to provide Plaintiff and Class Members with accurate itemized wage statements;
- (i) Whether Defendants failed to timely pay the Plaintiff and Class Members all wages due immediately upon termination or within 72 hours of resignation;
- (j) Whether Defendants failed to reimburse Plaintiff and Class Members for necessary business expenditures;
- (k) Whether Defendants' conduct was willful or reckless;
- (l) Whether Defendants engaged in unfair business practices in violation of Business and

1 Professions Code sections 17200, *et seq*; and

2 (m) Additional common questions of law and fact that may develop as the litigation
3 progresses.

4 **TYPICALITY**

5 32. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical of
6 the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising out of
7 and caused by Defendants' unlawful policies and practices; the claims arise out of the same course of
8 conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the claims of the
9 Class; and the legal issues raised under California state law as a result of Defendants' conduct apply
10 equally to Plaintiff and the Class Members.

11 **ADEQUACY OF REPRESENTATION**

12 33. Plaintiff is an adequate representative of the Class, in that his claims (and defenses, if
13 any) are typical of those of the Class. Plaintiff has no conflicts of interest with his fellow Class
14 Members and will be able to fairly and adequately protect the interests of the Class. Plaintiff has the
15 same interests in the litigation of this case as the Class Members; and is committed to vigorous
16 prosecution of this case and has retained competent counsel experienced in class action and wage and
17 hour litigation of this nature.

18 **PREDOMINANCE**

19 34. Defendants have engaged in a common course of wage and hour abuse toward Plaintiff
20 and Class Members. The common issues arising from this conduct that affect Plaintiff and Class
21 Members predominate over any individual issues. Adjudication of these common issues in a single
22 action has important and desirable advantages of judicial economy.

23 **SUPERIORITY OF CLASS ACTION**

24 35. A class action is superior to other available methods for the fair and efficient
25 adjudication of this controversy because individual litigation of the claims of all Class Members is
26 impracticable. Even if every Class Member could afford individual litigation, the court system could
27 not. It would be unduly burdensome to the courts in which individual litigation of numerous cases
28 would proceed. Individualized litigation would also present the potential for varying, inconsistent, or

1 contradictory judgments and would magnify the delay and expense to all parties and to the court
2 system resulting from multiple trials of the same complex factual issues. Moreover, individual actions
3 by Class Members may establish inconsistent standards of conduct for Defendants. By contrast, the
4 conduct of this action as a class action, with respect to some or all of the issues presented herein,
5 presents fewer management difficulties, conserves the resources of the parties and the court system,
6 and protects the rights of each Class Member.

7 36. Defendants have acted or refused to act in respects generally applicable to the Class,
8 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
9 herein.

10 **PUBLIC POLICY CONSIDERATIONS**

11 37. Employers in the State of California violate employment and labor laws every day.
12 Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation.
13 Former employees are fearful of bringing actions because they believe their former employers might
14 damage their future endeavors through negative references and/or other means. Class actions provide
15 Class Members who are not named in the action with a type of anonymity that allows for the
16 vindication of their rights while affording them privacy protections.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES**

19 **(Against All Defendants)**

20 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
21 fully set forth herein.

22 39. At all times herein relevant, Defendants had a duty to comply with Labor Code sections
23 204, 206, 210, 227.3, 246, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and
24 all applicable local minimum wage ordinances in effect throughout California.

25 40. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages
26 owed on regularly scheduled paydays at least twice during each calendar month, on days designated
27 in advance by the employer as the regular paydays. All wages earned in excess of the normal work
28 period must be paid no later than the payday for the next regular payroll period.

1 41. Labor Code section 206 provides that in case of a dispute over wages, the employer
2 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to
3 the employee all remedies he/she is otherwise entitled to as to any balance claimed.

4 42. Labor Code section 210 provides:
5 every person who fails to pay the wages of each employee as provided in Sections
6 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a
7 penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each
8 failure to pay each employee. (2) For each subsequent violation, or any willful or
9 intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
plus 25 percent of the amount unlawfully withheld. (b) The penalty shall either be
recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor
Commissioner as a civil penalty through the issuance of a citation or pursuant to
Section 98.3.

10 43. Labor Code section 227.3 requires employers to pay terminated employees for their
11 unused paid vacation time at their final rate of pay.

12 44. Labor Code section 246 generally requires employers to provide and allow employees
13 to use at least 24 hours, or three days, of paid sick leave per year.

14 45. At all times relevant, Labor Code section 510, and applicable sections of the California
15 Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with Defendants and
16 continue to apply to Class Members' employment with Defendants. Labor Code section 510 and
17 applicable provisions of the California Code of Regulations and IWC Wage Orders state that any work
18 performed in excess of eight hours in a workday and/or 40 hours in a workweek must be paid at one
19 and one-half times the employee's regular rate of pay. Any work performed in excess of 12 hours in
20 a workday must be compensated at the rate of no less than twice the regular rate of pay for an
21 employee.

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

25 47. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to
26 all employees in California for all hours worked. Local minimum wage ordinances, may provide for
27 higher minimum wage rates that must be paid to employees for all hours worked in those locales where
28 each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay less than

1 the state or local minimum wage, whichever is higher, for any hour of work.

2 48. Labor Code section 1194 requires that employers pay employees at least the legal
3 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.
4 Labor Code section 1194 further authorizes any employee receiving less than the legal minimum wage
5 applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages,
6 along with interest thereon, reasonable attorneys' fees and costs of suit.

7 49. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount
8 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

9 50. Labor Code section 1198 prohibits employers from employing for longer hours or less
10 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
11 the Labor Commissioner.

12 51. Plaintiff is informed, believes, and thereon alleges that during the Class Period, Plaintiff
13 and Class Members regularly worked over eight (8) hours, 10 hours per workday, and/or 12 hours per
14 workday, over 40 hours per workweek, and/or over eight (8) hours of work on the seventh consecutive
15 day of work.

16 52. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
17 Defendants failed to pay Plaintiff and Class Members all wages due at the proper rates, including
18 vacation pay, sick pay, and minimum, regular, overtime, and/or double time wages due to Defendants'
19 failure to include all remuneration when calculating the rate of pay, failure to pay the proper rate of
20 pay for overtime and double time, requiring off-the-clock work without compensation, failing to
21 provide proper paid-time-off, and rounding Plaintiff's and Class Members' time worked to
22 Defendants' advantage.

23 53. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein,
24 Plaintiff and Class Members have sustained and continue to sustain damages, including loss of
25 earnings from minimum, regular, overtime, and double time compensation due, in an amount to be
26 established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

27 54. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
28 conduct described herein, have committed an "intentional theft of wages in an amount greater than

1 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
2 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period” within
3 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
4 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
5 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
6 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
7 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
8 recover from Defendants treble damages and costs, including reasonable attorneys’ fees, pursuant to
9 California Penal Code section 496(c).

10 55. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as
11 described herein and below.

12 **SECOND CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(Against All Defendants)**

15 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
16 fully set forth herein.

17 57. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7
18 and 512, and the applicable IWC Wage Orders.

19 58. Labor Code section 512 and the IWC Wage Orders prohibit an employer from
20 employing any person for a work period of more than 5 hours per day without providing the employee
21 with a meal period of not less than 30 minutes (commencing before the employee’s fifth hour of work),
22 except that if the total work period per day is no more than 6 hours, the meal period may be waived
23 by mutual consent of the employer and employee. A second meal period of not less than 30 minutes
24 is required if an employee works more than 10 hours per day and must begin before the employee’s
25 tenth hour of work, except if the total hours worked is no more than 12 hours, the second meal period
26 may be waived by mutual consent of the employer and employee, but only if the first meal period was
27 not waived. An employer must relieve an employee of all duties during meal periods.

28 59. The applicable IWC Wage Orders state that “[u]nless the employee is relieved of all

1 duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period
2 and counted as time worked.”

3 60. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
4 requiring any employee to work during a meal period mandated by any California statute, regulation,
5 standard or order. If an employer fails to provide an employee with a meal period in accordance with
6 state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
7 employee one additional hour of pay at the employee’s regular rate of compensation for each workday
8 that the meal period is noncompliant.

9 61. During the Class Period, Plaintiff and Class Members did not receive compliant meal
10 periods for working more than five (5) and/or 10 hours per day because Plaintiff and Class Members
11 regularly worked through their meal periods, or had their meal periods shortened, interrupted, late,
12 restricted to the worksite, and/or missed altogether due to Defendants’ policy and practice of
13 prioritizing work demands over taking compliant breaks. Defendants also failed to provide Plaintiff
14 and Class Members with second meal periods.

15 62. During the Class Period, Defendants failed to pay Plaintiff and Class Members meal
16 period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the
17 applicable IWC Wage Order.

18 63. As a result of Defendants’ failure to provide compliant meal periods and pay meal
19 period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor
20 Code sections 226.7 and 512, Plaintiff and Class Members suffered and continue to suffer a loss of
21 wages and compensation.

22 64. Because Plaintiff and Class Members were and/or are entitled to such meal periods or
23 “premium pay” in lieu thereof, they are entitled to such payment per shift in an amount according to
24 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
25 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

26 65. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
27 conduct described herein, have committed an “intentional theft of wages in an amount greater than
28 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars

1 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period” within
2 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
3 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
4 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
5 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
6 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
7 recover from Defendants treble damages and costs, including reasonable attorneys’ fees, pursuant to
8 California Penal Code section 496(c).

9 66. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys’
10 fees and costs from Defendants in an amount subject to proof and approved by the Court.

11 **THIRD CAUSE OF ACTION**

12 **REST PERIOD VIOLATIONS**

13 **(Against All Defendants)**

14 67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
15 fully set forth herein.

16 68. At all relevant times, Defendants had a duty to comply with Labor Code section 226.7
17 and the applicable IWC Wage Orders.

18 69. The IWC Wage Orders require employers to authorize and permit all employees to take
19 10-minute duty-free rest periods for each four hours worked, or major fraction thereof.

20 70. If an employer fails to provide an employee with a rest period in accordance with
21 California law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay
22 the employee one additional hour of pay at the employee’s regular rate of compensation for each
23 workday that the rest period is noncompliant.

24 71. During the Class Period, Plaintiff and Class Members regularly had their rest breaks
25 shortened, interrupted, restricted to the worksite, and/or missed altogether due to Defendants’ policy
26 and practice of prioritizing work demands over taking compliant breaks, and failing to implement a
27 compliant rest break policy and practice. Consequently, Plaintiff and Class Members did not receive
28 a paid 10 minute rest period for every four (4) hours worked or major fraction thereof.

1 72. During the Class Period, Defendants failed to pay Plaintiff and Class Members rest
2 period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
3 applicable IWC Wage Order.

4 73. As a result of Defendants' failure to provide compliant rest periods and pay rest period
5 premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code
6 sections 226.7 and 516, Plaintiff and Class Members suffered and continue to suffer a loss of wages
7 and compensation.

8 74. Because Plaintiff and Class Members were and/or are entitled to such rest periods or
9 "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to
10 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
11 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

12 75. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
13 conduct described herein, have committed an "intentional theft of wages in an amount greater than
14 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
15 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
16 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
17 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
18 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
19 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
20 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
21 recover from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to
22 California Penal Code section 496(c).

23 76. Pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys' fees
24 and costs from Defendants in an amount subject to proof and approved by the Court.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

27 **(Against All Defendants)**

28 77. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though

1 fully set forth herein.

2 78. At all relevant times, Defendants had a duty to comply with Labor Code section 226.

3 79. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
4 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
5 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
6 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net
7 wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
8 identification number of the employee, (8) the name and address of the legal entity that is the
9 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked
10 at each hourly rate.

11 80. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a
12 knowing and intentional failure by an employer to provide an accurate itemized wage statement to
13 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
14 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
15 an award of costs and attorneys' fees.

16 81. During the Class Period, Defendants have knowingly and intentionally failed to comply
17 with Labor Code section 226(a) on wage statements that were provided to Plaintiff and Class
18 Members. The deficiencies include, among other things, Defendants' failure to correctly state the gross
19 and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period,
20 and the corresponding number of hours worked at each hourly rate.

21 82. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
22 and Class Members have suffered injury and damage to their statutorily protected rights. Specifically,
23 Plaintiff and Class Members have been injured by Defendants' intentional violation of California
24 Labor Code section 226(a) because they were denied both their legal right to receive, and their
25 protected interest in receiving, accurate itemized wage statements under California Labor Code section
26 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the underpayment of
27 wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage
28 in these efforts and incur these costs had Defendants provided the accurate wages earned. This has

1 also delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

2 83. Defendants' violations of California Labor Code section 226(a) prevented Plaintiff and
3 Class Members from knowing, understanding and disputing the wages paid to them, and resulted in
4 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional
5 failure to comply with California Labor Code section 226(a), Plaintiff and Class Members have
6 suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown
7 according to proof at trial.

8 84. Plaintiff and Class Members are also entitled to injunctive relief under California Labor
9 Code section 226(h), compelling Defendants to comply with California Labor Code section 226, and
10 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

11 **FIFTH CAUSE OF ACTION**

12 **WAITING TIME PENALTIES**

13 **(Against All Defendants)**

14 85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
15 fully set forth herein.

16 86. At all relevant times, Defendants had a duty to comply with Labor Code sections 201,
17 202, 203, and 227.3. Defendants failed to comply with these final paycheck requirements with respect
18 to Plaintiff and Waiting Time Subclass Members.

19 87. Labor Code section 201 requires that if an employer discharges an employee, the wages
20 earned and unpaid at the time of discharge are due and payable immediately.

21 88. Labor Code section 202 requires that if "an employee not having a written contract for
22 a definite period" quits, the employee's wages shall become due and payable no later than 72 hours
23 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in
24 which case the employee is entitled to his or her wages at the time of quitting.

25 89. Labor Code section 203 provides that if an employer willfully fails to pay, without
26 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
27 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
28 action therefor is commenced, but that the wages shall not continue for more than 30 days per

1 employee.

2 90. During the relevant time period, Defendants willfully failed to pay Waiting Time
3 Subclass Members all their earned wages upon termination including, but not limited to, minimum,
4 regular, overtime, and double time compensation, premium compensation, vacation pay, and business
5 expense reimbursements either at the time of discharge or within 72 hours of leaving Defendants'
6 employ.

7 91. As a result of Defendants' failure to timely pay all wages owed to Plaintiff and Waiting
8 Time Subclass Members in accordance with Labor Code sections 201, 202 and 203, Plaintiff and
9 Waiting Time Subclass Members are entitled to recover waiting time penalties, prejudgment interest,
10 attorneys' fees, and costs in amounts that will be established at trial.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 **(Against All Defendants)**

14 92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
15 fully set forth herein.

16 93. At all relevant times, Defendants had a duty to comply with Labor Code sections 2800
17 and 2802. Defendants failed to comply with these indemnification and reimbursement requirements
18 with respect to Plaintiff and Class Members.

19 94. Labor Code section 2800 requires employers to indemnify employees for losses caused
20 by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and Class
21 Members failed to request, demand, notify or otherwise seek reimbursement for their expenses and
22 losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class Members due to their
23 own negligence.

24 95. Labor Code section 2802(a) requires that employers indemnify and reimburse
25 employees for all business expenses, which are defined as all necessary expenditures or losses incurred
26 by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred
27 based on the employee's obedience to the employer's directions. Labor Code section 2802(b)
28 authorizes employees to recover in a court action interest which shall accrue from the date on which

1 the employee incurred the necessary expenditure or loss. Labor Code section 2802(c) authorizes
2 employees, who to enforce their right to reimbursements under Labor Code section 2802, to also
3 recover attorneys' fees and costs.

4 96. During the relevant time period, Defendants required Plaintiff and Class Members to
5 use their personal cellular phones for work purposes, such as communicating with Defendants'
6 management and navigating to worksites (e.g., using GPS), and wear and maintain uniforms with
7 Defendants' logo that became heavily soiled while they worked, all without adequately reimbursing
8 them for a reasonable portion of their cellular phone bills and the costs of cleaning and maintaining
9 their uniforms in violation of Labor Code sections 2800 and 2802.

10 97. As a result of Defendants' failure to indemnify and reimburse Plaintiff and Class
11 Members for all business and work-related costs, expenditures, losses and expenses in accordance
12 with Labor Code sections 2800 and 2802, Plaintiff and Class Members are entitled to recover the full
13 unreimbursed balance of reimbursements, expenditures and losses, prejudgment interest, and statutory
14 penalties, along with attorneys' fees and costs in amounts that will be established at trial.

15 **SEVENTH CAUSE OF ACTION**

16 **UNFAIR BUSINESS PRACTICES**

17 **(Against All Defendants)**

18 98. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
19 fully set forth herein.

20 99. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful
21 and harmful to Plaintiff and Class Members. Plaintiff seeks to enforce important rights affecting the
22 public interest within the meaning of Code of Civil Procedure section 1021.5.

23 100. Defendants' activities, as alleged herein, violate California law and constitute unlawful
24 business acts or practices in violation of California Business and Professions Code sections 17200, *et*
25 *seq.*

26 101. A violation of Business and Professions Code sections 17200, *et seq.* may be predicated
27 on the violation of any state or federal law.

28 102. Defendants' policies and practices have violated state law in at least the following

1 respects:

- 2 (a) Failing to pay all vacation pay, sick pay, and minimum, regular, overtime, and double
3 time wages due to Plaintiff and Class Members in violation of Labor Code sections
4 204, 206, 227.3, 246, 510, 1182.12, 1194, 1194.2, 1197 and 1198;
- 5 (b) Failing to provide meal periods without paying Plaintiff and Class Members premium
6 wages for every day in which a meal period was not provided in violation of Labor
7 Code sections 226.7 and 512;
- 8 (c) Failing to authorize or permit paid rest breaks without paying Plaintiff and Class
9 Members premium wages for every day in which a rest break was not authorized or
10 permitted in violation of Labor Code section 226.7;
- 11 (d) Failing to provide Plaintiff and Class Members with accurate itemized wage statements
12 in violation of Labor Code section 226;
- 13 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass Members
14 upon separation of employment in violation of Labor Code sections 201, 202, 203, and
15 227.3; and
- 16 (f) Failing to reimburse Plaintiff and Class Members all necessary business expenses in
17 violation of Labor Code sections 2800 and 2802.

18 103. Defendants intentionally avoided paying Plaintiff and Class Members' wages and
19 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
20 undercut their competitors and establish and gain a greater foothold in the marketplace.

21 104. Pursuant to Business and Professions Code sections 17202, 17203, and 17208, Plaintiff
22 and Class Members are entitled to restitution of the wages unlawfully withheld and retained by
23 Defendants during a period that commences four years prior to the filing of the Complaint; an award
24 of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and other applicable laws; and
25 an award of costs.

26 105. Plaintiff and Class Members are entitled to an injunction, restitution, and other
27 equitable relief against such unlawful practices to return all funds over which Plaintiff and Class
28 Members have an ownership interest and to prevent future damage pursuant to Business and

1 Professions Code sections 17200 *et seq.*

2 **EIGHTH CAUSE OF ACTION**

3 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

4 **(Against All Defendants)**

5 106. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
6 fully set forth herein.

7 107. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
8 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to
9 have been violated, and after receiving notice from the LWDA of its intention not to investigate or
10 after 65 days have passed without notice from the LWDA.

11 108. On April 24, 2023, Plaintiff gave written notice of the specified provisions alleged to
12 have been violated by Defendants including the facts and theories to support the alleged violations, as
13 required by Labor Code section 2699.3. This written notice was provided via certified mail to
14 Defendants and to the LWDA by electronically filing the notice via the Department of Industrial
15 Relations' website. More than 65 days have passed since Plaintiff submitted his PAGA notice to the
16 LWDA without a response from the LWDA. Accordingly, Plaintiff may amend the Complaint to add
17 a PAGA cause of action against Defendants.

18 109. Under Labor Code section 2699.3(a)(2)(C), "Notwithstanding any other provision of
19 law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
20 under this part at any time within 60 days of the time periods specified in this part." More than 65 days
21 have passed since Plaintiff submitted his PAGA notice to the LWDA without notice from the LWDA.
22 Accordingly, Plaintiff may amend his Complaint as a matter of right within this 60 day period as
23 specified by Labor Code section 2699.3(a)(2)(C).

24 110. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides
25 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
26 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
27 recovered through a civil action brought by an aggrieved employee on behalf of himself and other
28 current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

1 111. For all provisions of the Labor Code except those for which a civil penalty is
2 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred
3 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred
4 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which
5 Defendants violated these provisions of the Labor Code.

6 112. Pursuant to Labor Code sections 2699.3 and 2699.5, Plaintiff may seek civil penalties
7 for any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201,
8 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5,
9 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs
10 (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230,
11 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of
12 Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2,
13 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851,
14 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,
15 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision
16 (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296,
17 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,
18 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
19 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771,
20 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,
21 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
22 and 6399.7.

23 113. Defendants' conduct violates numerous Labor Code sections, including, but not limited
24 to, the following:

25 114. Violation of Labor Code sections 201-204, 206, 210, 227.3, 246, 510, 558, 1194, 1197,
26 1197.1, and 1198 for failure to timely pay all earned wages (including minimum, regular, overtime,
27 and double time wages) owed to Plaintiff and other aggrieved employees during employment and upon
28 separation of employment as herein alleged;

1 115. Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods to
2 Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as
3 herein alleged;

4 116. Violation of Labor Code sections 226.7 for failure to permit rest breaks to Plaintiff and
5 other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

6 117. Violation of Labor Code sections 226 and 226.3 for failure to provide accurate itemized
7 wage statements to Plaintiff and other aggrieved employees as herein alleged;

8 118. Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate
9 records regarding the employment of Plaintiff and other aggrieved employees as herein alleged; and

10 119. Violation of Labor Code section 2800 and 2802 for failure to reimburse Plaintiff and
11 other aggrieved employees for business expenses.

12 120. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a) of
13 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
14 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
15 violation in a subsequent citation, for which the employer fails to provide the employee a wage
16 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil
17 penalties provided for in this section are in addition to any other penalty provided by law.”

18 121. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf
19 of an employer who violates, or causes to be violated, a section of this chapter or any provision
20 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
21 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
22 employee for each pay period for which the employee was underpaid . . . (2) For each subsequent
23 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
24 employee was underpaid.”

25 122. Labor Code section 558.1 provides that any “employer or other person acting on behalf
26 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
27 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to
28 be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor Code], may be held liable

1 as the employer for such violation.”

2 123. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
3 maintain accurate and complete payroll records showing the hours worked daily by and the wages paid
4 to employees.

5 124. Labor Code section 1197.1 also provides “[a]ny employer or other person acting either
6 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
7 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
8 of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is
9 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period
10 for which the employee is underpaid . . . (2) For each subsequent violation for the same specific
11 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which
12 the employee is underpaid regardless of whether the initial violation is intentionally committed.

13 125. As set forth above, Defendants have violated numerous provisions of the Labor Code
14 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff also seeks
15 the civil penalties set forth in Labor Code sections 558 and 1197.1 for himself, the underpaid
16 employees, and the State of California.

17 126. Plaintiff is an “aggrieved employee” because he was employed by the alleged violators
18 and had one or more of the alleged violations committed against him, and therefore is properly suited
19 to represent the interests of all other aggrieved employees.

20 127. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3
21 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other
22 aggrieved employees under PAGA.

23 128. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
24 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
25 above.

26 129. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

27 **PRAYER FOR RELIEF**

28 Plaintiff, individually and on behalf of all others similarly situated, other aggrieved employees,

1 and the State of California, prays for relief and judgment against Defendants, jointly and severally, as
2 follows:

- 3 1. For certification of this action as a class action, including certifying the Class and
4 Subclass alleged by Plaintiff;
- 5 2. For appointment of Plaintiff Victor Rojas as the class representative;
- 6 3. For appointment of the Law Office of Daniel J. Hyun and Parker Law APC as class
7 counsel for all purposes;
- 8 4. For compensatory damages in an amount according to proof with interest thereon;
- 9 5. For economic and/or special damages in an amount according to proof with interest
10 thereon;
- 11 6. For damages, monetary relief, wages, premiums, reimbursements, benefits and
12 penalties, including interest thereon;
- 13 7. For waiting time penalties pursuant to Labor Code section 203;
- 14 8. For liquidated damages pursuant to Labor Code section 1194.2;
- 15 9. For statutory penalties to the extent permitted by law, including those pursuant to the
16 Labor Code and IWC Wage Orders;
- 17 10. For restitution to Plaintiff and Class Members of all money and property unlawfully
18 acquired by Defendants through unfair or unlawful business practices pursuant to
19 Business and Professions Code sections 17200 *et seq.*;
- 20 11. For an order requiring Defendants to restore and disgorge all funds to each employee
21 acquired by means of any act or practice declared by this Court to be unlawful, unfair
22 or fraudulent and, therefore, constituting unfair competition under Business and
23 Professions Code sections 17200, *et seq.*;
- 24 12. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6
25 and Civil Code sections 3287 and 3289;
- 26 13. For post judgment interest on all amounts awarded to Plaintiff and Class Members as
27 provided by law;
- 28 14. For recovery of attorneys' fees and costs provided by Labor Code sections 218.6, 226,

1194, 2698 *et seq.*, 2802, and Code of Civil Procedure section 1021.5;

15. For PAGA penalties;

16. For treble damages; and

17. For such other relief as the Court deems just and proper.

Dated: June 30, 2023

LAW OFFICE OF DANIEL J. HYUN
PARKER LAW APC

By: 

Daniel J. Hyun

Jarod A. Parker

Attorneys for Plaintiff VICTOR ROJAS

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: June 30, 2023

LAW OFFICE OF DANIEL J. HYUN
PARKER LAW APC

By: 

Daniel J. Hyun

Jarod A. Parker

Attorneys for Plaintiff VICTOR ROJAS