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behalf of herself and others similarly situated,

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ADRIANA MONTES, individuals, on
behalf of herself and others similarly
situated,

Plaintiff,

vs.

CAPSTONE LOGISTICS, LLC.,
WINCO FOODS, LLC, AND DOES 1
TO 50,

Defendant.

Case No. 1:24-cv-01485-SAB
Assigned for All Purposes to:
Magistrate Judge Stanley A. Boone

**FIRST AMENDED CLASS
ACTION & PAGA COMPLAINT**

1. Failure to Pay All Wages Including Minimum and Overtime Wages
2. Failure to Provide Meal Periods
3. Failure to Provide Rest Periods;
4. Failure to Provide Recovery Periods;
5. Failure to Produce Wage Statements;
6. Failure to Produce Personnel Records;
7. Failure to Produce Signed Records;
8. Failure to Implement Heat Prevention & Maintain Legal Temperature Controls;

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- 9. Failure to Provide Accurate Itemized Wage Statements;
- 10.Failure to Pay Waiting Time Penalties;
- 11.Failure to Reimburse for Necessary Business Expenditures;
- 12.Violation of California’s Quota Laws;
- 13.Unfair Business Practices in Violation of Cal. Bus. & Prof Code §§ 17200, *et seq.* and,
- 14.Enforcement of the Private Attorneys General Act of 2004

Action Filed: October 24, 2024
Trial Date: None Set
Removal Date: December 5, 2024

1 Plaintiff, ADRIANA MONTES, (hereinafter, “Plaintiff”), individually, and on
2 behalf of herself and all others similarly situated, bring this Class Action Complaint
3 (“Complaint”) against defendant, CAPSTONE LOGISTICS, LLC, WINCO FOODS,
4 LLC and Does 1 through 50 (collectively, “Defendants”), and alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action brought on behalf of Plaintiff and the class she seeks
7 to represent (“Class” or “Class Members”). The Class consists of all current and
8 former non-exempt employees employed by Defendants in the State of California
9 during the four (4) years prior to the filing of this class action until class certification
10 (“Class Period”). Plaintiff reserves the right to amend this complaint to reflect a
11 different Class Period as further discovery is conducted.

12 2. Plaintiff, individually and on behalf of the Class Members, seeks relief
13 against Defendants due to Defendants’ violations of the applicable Industrial Welfare
14 Commission (“IWC”) Wage Orders, Code of Regulations, and Labor Code,
15 including: (1) failure to pay all wages (including minimum, regular, overtime, and
16 double time compensation), (2) failure to provide meal periods or compensation in
17 lieu thereof, (3) failure to authorize or permit rest breaks or provide compensation in
18 lieu thereof, (4) failure to provide recovery periods, (5) failure to produce Wage
19 Statements (Payroll Records), (6) failure to produce personnel records, (7) failure to
20 provide signed records, (8) failure to implement heat prevention and maintain legal
21 temperature controls, (9) failure to provide accurate itemized wage statements, (10)
22 failure to pay Waiting Time Penalties, (11) failure to reimburse for necessary business
23 expenses, (12) violations of California Labor Code section 2100 *et. seq.*, California’s
24 quota laws, (13) Unfair Business Practices in Violation of Cal. Bus. & Prof Code §§
25 17200, *et seq.*, and (14) Enforcement of the Private Attorneys General Act of 2004.

26 3. At all relevant times herein, Defendants have consistently maintained
27 and enforced against Plaintiff and Class Members the unlawful practices and policies
28 set forth herein.

4. Plaintiff seeks injunctive and monetary relief against Defendants on behalf of herself and the putative Class to recover, among other things, unpaid wages, liquidated damages, restitution, interest, attorneys' fees, costs, and penalties pursuant to California Labor Code §§ 201-204, 206, 208, 226, 226/3, 226.7, 227.3, 432, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 1198.5, 2100-2112, 2802, and California Code of Civil Procedure § 1021.5.

PARTIES

5. Plaintiff ADRIANA MONTES is a California citizen and resides in Merced County and was employed by Defendants. Defendants employed Plaintiff as a non-exempt, hourly employee during the Class Period. Plaintiff ADRIANA MONTES is a covered employee pursuant to California Labor Code §§ 2100 – 2112. Plaintiff was employed at Defendant’s facility located at 4400 Crows Landing Rd, Modesto, CA 95358.

6. Defendant CAPSTONE LOGISTICS, LLC is incorporated in Delaware, and is doing business throughout California. CAPSTONE LOGISTICS, LLC, conducts business throughout California, including in MERCED County, among other counties and cities throughout California. CAPSTONE LOGISTICS, LLC owns and operates delivery, warehouse, and servicing centers throughout California, including the center in which it employed Plaintiff and is a covered employer pursuant to California Labor Code §§ 2100 *et seq.*

7. Defendant WINCO FOODS, LLC is incorporated in Delaware, and is doing business throughout California. WINCO FOODS, LLC conducts business throughout California, including in MERCED County, among other counties and cities throughout California. WINCO FOODS, LLC owns and operates delivery, warehouse, and servicing centers throughout California, including the center in which it employed Plaintiff and is a covered employer pursuant to California Labor Code §§ 2100 *et seq.*

8. Defendants Does 1 – 25 are successors, predecessors, affiliates,

1 subsidiaries, affiliates, and/or related companies of Defendants. On information and
2 belief, these Doe defendants are joint employers and covered employers pursuant to
3 California Labor Code § 2100 and are liable to Plaintiff and the Plaintiff's Class.

4 9. Defendants DOES 26 through 50 are sued under fictitious names
5 pursuant to California Code of Civil Procedure § 474 because Plaintiff does not know
6 their true names or capacities. Plaintiff will seek leave of court to amend this
7 Complaint and serve such fictitiously named Defendants when their names and
8 capacities are ascertained. Plaintiff is informed and believes, and thereon alleges, that
9 DOES 1 through 50 are or were the partners, joint employers, agents, owners,
10 shareholders, managers, or employees of CAPSTONE LOGISTICS, LLC and
11 WINCO FOODS LLC at all times relevant to this Complaint.

12 **JURISDICTION AND VENUE**

13 10. This Court has jurisdiction over this action pursuant to the California
14 Constitution, Article VI, § 10 and California Code of Civil Procedure § 410.10. All
15 claims alleged herein arise under California law for which Plaintiff seeks relief
16 authorized by California law.

17 11. Plaintiff brings this action pursuant to California Code of Civil
18 Procedure § 382. The relief and monetary damages, restitution, penalties, and other
19 amounts Plaintiff seeks exceed the minimal jurisdictional limits of this Court.

20 12. This Court has personal jurisdiction over Defendants because
21 CAPSTONE LOGISTICS, LLC, maintains a principal place of business in California
22 and Defendants, on information and belief, have sufficient minimum contacts in
23 MERCED California, or otherwise intentionally avail themselves of the California
24 market so as to render the exercise of jurisdiction over them by this Court consistent
25 with traditional notions of fair play and substantial justice.

26 13. This Court has personal jurisdiction over Defendants because WINCO
27 FOODS, LLC maintains a principal place of business in California and Defendants,
28 on information and belief, have sufficient minimum contacts in MERCED California,

1 or otherwise intentionally avail themselves of the California market so as to render
2 the exercise of jurisdiction over them by this Court consistent with traditional notions
3 of fair play and substantial justice.

4 14. Venue is proper in this Court under California Code of Civil Procedure
5 §§ 395(a) and 395.5 because, on information and belief, Defendants reside, transact
6 business, maintain offices, and/or have an agent or agents in this county, and the acts
7 and omissions alleged herein took place in this county.

8 15. This Court is an appropriate venue for this action under California Code
9 of Civil Procedure §§ 395 and 395.5 because the acts that give rise to the causes of
10 action alleged herein occurred in the MERCED and throughout the State of
11 California. Plaintiff hereby designates the MERCED, State of California as the place
12 of proper venue. This Court has personal jurisdiction over Defendants because
13 Defendants reside in, are incorporated in, have their main place of business in, and/or
14 conducts business in the State of California, and a substantial portion of the acts,
15 omissions, events, and transactions constituting the causes of action alleged herein
16 occurred within the State of California, and more specifically, in the MERCED. (See
17 California Code of Civil Procedure § 410.10).

18 16. This Court has subject matter jurisdiction over the causes of action
19 alleged in this Complaint because the Court is a court of general subject matter
20 jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction
21 over said causes of action.

22 17. The State of California, MERCED County, has jurisdiction in this
23 matter because the individual claims are under the seventy-five thousand dollar
24 (\$75,000.00) individual jurisdictional threshold and the five million dollar
25 (\$5,000,000.00) aggregate jurisdictional threshold for federal court diversity
26 jurisdiction. Further, there is no federal question at issue as the issues herein are
27 based solely on the California Labor Code, Industrial Welfare Commission Wage
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1 Orders, Code of Civil Procedure and Rules of Court. Thus, the State of California,
2 MERCED Superior Court maintains the appropriate jurisdiction to hear this matter.

3 **ARBITRATION**

4 18. Plaintiff and Class Members' claims as alleged herein are not subject to
5 arbitration agreements. PAGA or Class Action claims waivers are not enforceable
6 against employees engaged in interstate commerce as transportation workers.
7 Defendants' arbitration agreement, if any, does not apply to this matter for the
8 following reasons: 1) Plaintiff falls with the Transportation Workers Exemption and
9 the FAA does not apply, and 2) Plaintiff's PAGA claims for civil penalties are not
10 Covered Claims under Defendants' Arbitration Agreement, and 3) as the FAA does
11 not apply to the parties, Defendants' agreement is unenforceable should it exist.

12 19. Although the FAA applies broadly and requires enforcement of certain
13 arbitration agreements according to their terms, under the transportation worker
14 exemption, "contracts of employment with seamen, railroad employees, or any other
15 class of workers engaged in foreign or interstate commerce" are exempt from the
16 FAA. 9 U.S.C. § 1; *Ortiz v. Randstad InHouse Services, LLC* (9th Cir. 2024) 95 F.4th
17 1152. The U.S. Supreme Court recently addressed the transportation workers
18 exemption in *Southwest Airlines Co. v. Saxon* (2022), 596 U.S. 450, 456. The U.S.
19 Supreme Court engaged in a two-step analysis to determine whether an employee
20 qualified under the transportation workers exemption. *Id.* at 455-459. First, the Court
21 "defined the relevant class of workers. *Id.* at 455. Second, the Court then "determine
22 whether that class of workers is 'engaged in foreign or interstate commerce.'" *Id.*

23 20. In this case, Plaintiff and putative Class Members were and are of the
24 class of workers that engaged in foreign or interstate commerce. Plaintiff performed
25 an essential function at Defendants' distribution centers, logistic facilities, fulfillment
26 centers, and/or warehouses in MERCED. Defendants ship products to locations
27 throughout the country which arrive from destinations nationally and internationally.
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1 Plaintiff and/or Class Members were responsible for tasks and duties essential to
2 Defendants' business of moving products and goods throughout the county.

3 21. Plaintiff and Class Members worked at the Defendants' warehouse
4 location(s), which received and shipped goods and products, through both foreign
5 and interstate streams of commerce. Plaintiff and putative Class Members were and
6 are a class of workers who "played a direct and 'necessary role in the free flow of
7 goods' across borders" and "actively engaged in transportation" of such goods.
8 *Saxon*, 596 U.S. at 458 (quoting *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105,
9 121 (2001)). In this case, the relevant goods and products were still moving in
10 interstate commerce when Plaintiff and putative Class Members interacted with
11 them, and Plaintiff played a necessary part in facilitating their continued movement.

12 22. As Plaintiff was "actively engaged" and "intimately involved with" the
13 interstate commerce of goods and products, Plaintiff and Class Members are exempt
14 transportation worker under the FAA. As such, the FAA does not apply to the
15 arbitration agreement, if one exists.

16 **CLASS ALLEGATIONS**

17 23. Plaintiff brings this class action pursuant to California Code of Civil
18 Procedure § 382 on behalf of herself and all others similarly situated who were injured
19 by Defendants' violations of the Labor Code, Business and Professions Code §§
20 17200, *et seq.*, and IWC Wage Orders during the Class Period.

21 24. Plaintiff's and Class Members' job duties, at DEFENDANTS included
22 a sundry of warehouse duties subject to production targets and quotas. Under
23 Defendants' quotas, Plaintiff and putative Class Members are assigned or required to
24 perform at a specified productivity speed, or perform a quantified number of tasks, or
25 to handle or produce a quantified amount of material, within a defined time period
26 and under which employees suffer adverse employment actions if they fail to
27 complete the performance standard for DEFENDANTS.

28 25. Plaintiff is informed and believes, and thereon alleges that at all times

1 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC
2 Wage Orders as employers, whose employees were and are engaged throughout this
3 county and the State of California.

4 26. Plaintiff is informed and believes, and thereon alleges, that each
5 Defendants acted in all respects pertinent to this action as the agent of the other
6 Defendants, carried out a joint scheme, business plan, or policy in all respects
7 pertinent hereto, and the acts of each Defendants are legally attributable to the other
8 Defendants.

9 27. Plaintiff is informed and believes, and thereon alleges, that each of the
10 Defendants directly or indirectly, through agents or other persons or entities,
11 employed or otherwise exercised control over the wages, hours, and working
12 conditions of Plaintiff and the Class Members. Furthermore, each of the Defendants
13 in all respects acted as the employer and/or joint employer of Plaintiff and the Class
14 Members.

15 28. Plaintiff is informed and believes, and thereon alleges, that each and all
16 of the acts and omissions alleged herein were performed by, or are attributable to, the
17 Defendants, acting as the agent, alter ego, agent, servant, joint ventures, co-
18 conspirator, and/or partner for the other, within a common enterprise and legal
19 authority to act on the other's behalf. The acts of any and all Defendants were in
20 accordance with, and represent, the official policy of DEFENDANTS.

21 29. At all relevant times, Defendants, and each of them, acted within the
22 scope of such agency or employment, or ratified each and every act or omission
23 complained of herein. At all relevant times, Defendants, and each of them, aided and
24 abetted the acts and omissions of each and all the other Defendants in proximately
25 causing the damages herein alleged.

26 30. Plaintiff is informed and believes, and thereon alleges, that each of said
27 Defendants is in some manner intentionally, negligently, and/or otherwise responsible
28 for the acts, omissions, occurrences, and transactions alleged herein.

1 31. Plaintiff's proposed Class consists of and is defined as follows:

2 Class

3 All current and former non-exempt employees employed by Defendants
4 in the State of California within four years prior to the filing of this action
5 to the date of class certification.

6 Recovery Period Subclass

7 All persons who are employed or have been employed by Defendants in
8 the State of California who, within the four years of the filing of this
9 Complaint, have worked as non-exempt employees and were not
10 permitted or provided recovery periods or paid compensation in lieu
11 thereof.

12 Meal Period Subclass

13 All persons who are employed or have been employed by Defendants in
14 the State of California who, within the four years of the filing of this
15 Complaint, have worked as non-exempt employees and were not
16 permitted or provided meal periods or paid compensation in lieu thereof.

17 Rest Period Subclass

18 All persons who are employed or have been employed by Defendants in
19 the State of California who, within the four years of the filing of this
20 Complaint, have worked as non-exempt employees and were not
21 permitted or provided rest periods or paid compensation in lieu thereof.

22 Personnel File Subclass

23 All persons who are employed or have been employed by Defendants in
24 the State of California who, for the four years prior to the filing of this
25 class action to the present have worked as non-exempt employees and
26 have requested their personnel file and were denied and/or not provided
27 their personnel file pursuant to California law.

28 Waiting Time Subclass

1 All Class Members who separated from their employment with
2 Defendants and who were not paid waiting time penalties at any time
3 within three years prior to the filing of this action to the date of class
4 certification.

5 Plaintiff also seeks to certify the following Subclass:

6 Quota Subclass

7 All current and former non-exempt employees employed by Defendants
8 in the State of California since January 1, 2022, who were subject to
9 quotas in violation of Labor Code §§ 2100-2112.

10 Temperature Subclass

11 All current and former non-exempt employees employed by Defendants
12 in the State of California who were subject to unlawful temperature
13 control and heat prevention.

14 32. Members of the Class and Subclasses described above will be
15 collectively referred to as “Class Members.”

16 33. Plaintiff reserves the right to modify or re-define the Class or
17 Subclass(es), establish additional subclasses, or modify or re-define any class or
18 subclass definition as appropriate based on investigation, discovery, and specific
19 theories of liability.

20 34. There is a well-defined community of interest in this litigation and the
21 proposed Class and Subclass are readily ascertainable.

22 35. **Commonality:** This action has been brought and may properly be
23 maintained as a class action under the California Code of Civil Procedure § 382
24 because there are common questions of law and fact as to the Class Members that
25 predominate over any questions affecting only individual members including, but not
26 limited to, the following:

- 27 (a) Whether Defendants’ practices and policies violated Labor Code §§
28 2100-2112 for requiring warehouse employees to meet excessive and

1 unlawful quotas thereby preventing them from complying with rest,
2 recovery and meal periods, their ability to use restroom facilities and
3 exposed them to safety and OSHA violations;

4 (b) Whether Defendants paid Plaintiff and Class Members all non-
5 discretionary bonuses and wages for all hours worked, including the
6 correct legal regular wage, minimum wage, and overtime and double
7 overtime rate;

8 (c) Whether Defendants paid Plaintiff and Class Members the correct legal
9 wages for all hours worked, including the correct legal minimum wage,
10 overtime and double overtime rate, premium wages, sick pay, and
11 vacation pay when Defendants paid bonuses;

12 (d) Whether Defendants pay or vest sick pay wages in accordance with
13 California law;

14 (e) Whether Defendants violated the vacation pay law in California pursuant
15 to Labor Code § 227.3;

16 (f) Whether Defendants violated California's reporting time pay
17 regulations;

18 (g) Whether Defendants' rounding policy and practice favored Defendants
19 by systematically undercompensating Plaintiff and Class Members;

20 (h) Whether Defendants compensated Plaintiff and Class Members for hours
21 worked during rest, meal, and recovery periods while under the control
22 of Defendants;

23 (i) Whether Defendants required Plaintiff and Class Members to work off-
24 the-clock without compensation;

25 (j) Whether Defendants required Plaintiff and Class Members to incur
26 business expenses without reimbursement;

27 (k) Whether Defendants provided Plaintiff and Class Members with
28 compliant meal periods or paid compensation in lieu thereof;

- 1 (l) Whether Defendants provided Plaintiff and Class Members with
2 compliant rest periods or paid compensation in lieu thereof;
- 3 (m) Whether Defendants provided Plaintiff and Class Members with
4 compliant recovery periods or paid compensation in lieu thereof;
- 5 (n) Whether Defendants have a common policy and/or practice of failing to
6 keep and maintain accurate records subject to Labor Code §§ 226,
7 1198.5, and/or 432;
- 8 (o) Whether Defendants have a common policy and/or practice of failing to
9 produce and/or timely produce records in response to a request under
10 Labor Code § 226, 1198.5, and/or 432;
- 11 (p) Whether Defendants have a common policy and/or practice of lawfully
12 complying with Labor Code §§ 226, 1198.5, and/or 432 requests on a
13 weekly, monthly, or yearly basis by store location;
- 14 (q) Whether Defendants have a common policy and/or practice of providing
15 specific records for requests pursuant Labor Code §§ 226, 1198.5, and/or
16 432 which do not comply with California law;
- 17 (r) Whether Defendants have a common policy and/or practice of lawfully
18 complying with Labor Code §§ 226, 1198.5, and/or 432 requests via HR
19 at its various facilities;
- 20 (s) Whether Defendants have a common policy and/or practice of lawfully
21 complying with Labor Code §§ 226, 1198.5, and/or 432 requests on an
22 internal versus external basis (i.e. by a team member versus a former
23 team member);
- 24 (t) Whether Defendants have a common policy and/or practice of lawfully
25 complying with Labor Code §§ 226, 1198.5, and/or 432 requests based
26 on internal documentation and/or correspondence in response to a
27 request for qualifying records thereon (including any correspondence
28 listing or outlining what Defendants' employee(s) ascertained for

purposes of compliance and what they left out of the production);

(u) Whether Defendants have a common policy and/or practice of lawfully complying with Labor Code §§ 226, 1198.5, and/or 432 requests under each of Defendants’ internal departments including but not limited to HR, payroll, etc., that routinely handle any aspect of a request subject to those Labor Code §§;

(v) Whether Defendants have a common policy and/or practice of lawfully complying with Labor Code §§ 226, 1198.5, and/or 432 for payments made to any requestor for statutory penalties under those Labor Code §§;

(w) Whether Defendants have a common policy and/or practice of failing to comply with Labor Code § 226 through its “Computer-Generated Records” productions;

(x) Whether Defendants failed to provide Plaintiff and Class Members with accurate itemized wage statements;

(y) Whether Defendants in the State of California who were subject to unlawful temperature control and heat prevention.

(z) Whether Defendants failed to timely pay the Plaintiff and Class Members all wages due immediately upon termination or within 72 hours of resignation;

(aa) Whether Defendants’ conduct was willful or reckless; and,

(bb) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

36. There is a well-defined community of interest. Plaintiff and Class Members have suffered common injuries as a result of Defendants’ systemic employment policies and practices. Looking to Defendants’ employment policies and practices, the Court can adjudicate the lawfulness of those policies and practices on a class-wide basis, according to proof, and issue an award to Plaintiff and Class Members accordingly. Answers to common questions raised in this Complaint will

1 advance resolution of each individual Class Member's claims.

2 37. **Numerosity:** The Class Members are so numerous that joinder of all
3 members is impracticable. Although the members of the entire Class and Subclasses
4 are unknown to Plaintiff at this time, on information and belief, the class is estimated
5 to be greater than 5000 individuals and estimated over 7000 through successors,
6 predecessors, affiliated, subsidiaries, and/or related companies.

7 38. **Ascertainability:** The identities of the Class Members are readily
8 ascertainable by inspection of Defendants' employment and payroll records.

9 39. **Typicality:** The claims (or defenses, if any) of Plaintiff is typical of the
10 claims of the Class Members because Defendants' failure to comply with the
11 provisions of California's wage and hour laws entitled each Class Member to similar
12 pay, benefits, and other relief. The injuries sustained by Plaintiff is also typical of the
13 injuries sustained by Class Members because they arise out of and are caused by
14 Defendants' common course of conduct as alleged herein.

15 40. **Adequacy:** Plaintiff will fairly and adequately represent and protect the
16 interests of all Class Members because it is in Plaintiff' best interest to prosecute the
17 claims alleged herein to obtain full compensation and penalties due to Plaintiff and
18 the Class Members. Plaintiff' attorneys, as proposed class counsel, are competent and
19 experienced in litigating large employment class actions and versed in the rules
20 governing class action discovery, certification, and settlement. Plaintiff have incurred
21 and, throughout the duration of this action, will continue to incur attorneys' fees and
22 costs that have been and will be necessarily expended for the prosecution of this action
23 for the substantial benefit of the Class Members.

24 41. **Superiority:** The nature of this action makes use of class action
25 adjudication superior to other methods. A class action will achieve economies of time,
26 effort, and expense as compared to separate lawsuits and will avoid inconsistent
27 outcomes because the same issues can be adjudicated in the same manner for the
28 entire Class and Subclasses at the same time. If appropriate, this Court can, and is

1 empowered to, fashion methods to efficiently manage this case as a class action.

2 **42. Public Policy Considerations:** Employers in the State of California
3 violate employment and labor laws every day. Current employees are often afraid to
4 assert their rights out of fear of direct or indirect retaliation. Former employees are
5 fearful of bringing actions because they believe their former employers might damage
6 their future endeavors through negative references and/or other means. Class actions
7 provide class members who are not named in the complaint with a type of anonymity
8 that allows for the vindication of their rights while affording them privacy protections.

9 **43.** The quota laws clearly state that “... *an employee cannot be required to*
10 *meet a quota that prevents compliance with meal or rest breaks, use of bathroom*
11 *facilities (including reasonable travel time to and from bathrooms), or compliance*
12 *with occupational health and safety standards. A quota that prevents compliance with*
13 *meal or rest breaks, use of bathroom facilities, including reasonable travel time to*
14 *and from bathroom facilities, or occupational health and safety laws in the Labor*
15 *Code or division standards is unlawful and may not be the basis for an adverse*
16 *employment action. A quota may be illegal if it directly or indirectly precludes*
17 *employees from exercising these statutory rights. For example, a quota that*
18 *requires that employees always be engaged in productive activity during work hours*
19 *would be unlawful as it would directly prevent employees from taking meal and rest*
20 *periods and prevent them from using bathroom facilities during work hours or*
21 *exercising their rights regarding health and safety standards.* Similarly, a quota
22 may not be so high that if an employee takes meal and rest breaks, goes to the
23 bathroom, or attempts to exercise their rights under occupational health and safety
24 standards, they will fail to meet the quota. Such a quota indirectly precludes an
25 employee from exercising these statutory rights and is also unlawful. An employer
26 cannot take adverse employment action against an employee for failing to meet an
27 unlawful quota or a quota that has not been disclosed to the employee.” See Cal. Lab.

1 Code § 2102; see Cal. Lab. Code § 2103; see DLSE FAQ summary and description
2 of California's quota laws at
3 https://www.dir.ca.gov/dlse/FAQ_warehousequotas.htm.

4 **GENERAL ALLEGATIONS**

5 44. **Background:** At all relevant times mentioned herein, Defendants
6 employed Plaintiff and other persons as non-exempt employees at numerous locations
7 within California. Defendants employed Plaintiff in a non-exempt position during her
8 employment and continues to employ non-exempt employees within California.

9 45. Plaintiff is informed and believes, and thereon alleges, that at all times
10 herein mentioned, Defendants were advised by skilled lawyers, employees, and other
11 professionals who were knowledgeable about California's wage and hour laws,
12 employment and personnel practices, and the requirements of California law.

13 46. Plaintiff is informed and believes, and thereon alleges, that Defendants
14 knew or should have known they had a duty to compensate Plaintiff and Class
15 Members, and Defendants had the financial ability to pay such compensation but
16 willfully, knowingly, and intentionally failed to do so all in order to increase
17 Defendants' profits. Furthermore, Plaintiff, is informed and believes, and thereon
18 alleges that Defendants further implemented an unlawful policy and practice of
19 alleging that employees were "stealing time" when they failed to clock-in or clock-
20 out at the designated scheduled time when in fact Defendants use this strategy to
21 terminate, reprimand, or retaliate against employees who complained that
22 Defendants' quota and production demands were unreasonable and violated
23 California Labor Code §§ 2100 – 2112.

24 47. Plaintiff is informed and believes, and thereon alleges, that at all times
25 Defendants tracked each and every workday, pay period, shift, meal period, and rest
26 period that was unlawful and in violation of California laws. Defendants were also
27 fully cognizant that they failed to maintain the proper temperature controls as required
28 by the IWC Wage Orders and California law, as such, exposing them to further health

1 and OSHA safety requirements, prohibited under California quota laws.

2 48. Plaintiff is informed and believes, and thereon alleges, that Defendants
3 knew or should have known that they imposed systematic quota and production
4 demands on Plaintiff and Class Members in violation of employees' rights pursuant
5 to California Labor Code §§ 2100 et. seq. DEFENDANTS had a duty to ensure its
6 production demands did not interfere or prevent compliance with Plaintiff' and Class
7 Members' right to lawful meal periods, rest periods, bathroom breaks, and/or expose
8 them to safety hazards. DEFENDANTS willfully, knowingly, and intentionally failed
9 to establish legally compliant quotas, placing profits above concern for employee
10 safety.

11 49. **Unpaid Wages:** Plaintiff is informed and believes, and thereon alleges,
12 that Defendants knew or should have known that Plaintiff and Class Members were
13 entitled to receive at least minimum, regular, overtime, and double times wages and
14 that they were not receiving minimum, regular, overtime, and double time wages for
15 all work that was required to be performed. Furthermore, Defendants knew that on
16 January 1, 2022, they must provide Plaintiff and Class Members a written description
17 of Defendants' quota production demands and failed to do so.

18 50. Plaintiff is informed and believes, and thereon alleges, that during the
19 Class Period, Plaintiff and Class Members regularly worked in excess of eight (8)
20 hours in a workday and/or 40 hours in a workweek and/or in excess of 12 hours in a
21 workday. On information and belief, Defendants did not accurately or appropriately
22 compensate Plaintiff and Class Members for the hours worked. Defendants routinely
23 manipulated the time-keeping program and even allowed managing agents to edit,
24 modify, delete, and/or time entries without the express consent of Plaintiff or Class
25 Members.

26 51. Plaintiff is informed and believe, and thereon alleges, that in violation
27 of the Labor Code and IWC Wage Orders, Defendants rounded, edited, and/or input
28 the incorrect times for Plaintiff' and Class Members' start times to reflect the

1 scheduled start time instead of the actual start time which should have included time
2 spent arriving early to work, and performing other preliminary duties and
3 postliminary duties, and otherwise preparing for the workday. Defendants also
4 rounded Plaintiff' and Class Members' end time to reflect the scheduled end time
5 despite working past those hours. As such, Plaintiff and Class Members performed
6 work off-the-clock without compensation. Plaintiff and Class Members were not paid
7 a split shift premium and were required to work shifts which were sufficiently long
8 and were counted as "meal period" and "rest periods." While under the control of
9 Defendants or any joint employer they were not paid the split shift interval.
10 Defendants failed to compensate Plaintiff and Class Members for all hours worked
11 for work performed off-the-clock and for reporting time pay, and overtime pay.
12 Defendants failed to pay the appropriate and correct legal wages for bonus pay (i.e.,
13 premium pay, sick pay, vacation pay, overtime and double overtime) and vacation
14 pay according to California law.

15 52. **Meal Period Violations:** Plaintiff is informed and believes, and thereon
16 alleges, that Defendants knew or should have known that Plaintiff and Class Members
17 were entitled to receive a timely, off-duty, uninterrupted 30-minute meal period for
18 every five hours of work, or payment of one additional hour of pay at their regular
19 rate of pay when they did not receive a compliant meal period. Defendants enacted
20 quotas that prevented Plaintiff and Class Members from taking lawful meal periods.
21 During the Class Period, Plaintiff and Class Members regularly worked in excess of
22 five (5) and/or 10 hours per workday. In violation of the Labor Code and IWC Wage
23 Orders, Plaintiff and Class Members did not receive compliant meal periods. As such,
24 Defendants failed to provide all required meal period, including second meal periods
25 when Plaintiff and Class Members worked in excess of 10 hours per workday. Even
26 though Plaintiff and other Class Members were prevented from taking compliant meal
27 periods, Defendants failed to provide them with premium pay for every non-
28 compliant meal period. Defendants' quota requirements were unlawful and prevented

1 employees from complying with California laws regarding meal periods.

2 **53. Rest Period Violations:** Defendants tracked and maintained a record of
3 each and every rest period that violated California law including when Plaintiff or
4 Class Members worked up to 10 - 12 hours in a workday. Defendants' quota demands
5 were unreasonable and pressured Plaintiff and Class Members to work through rest
6 periods. Plaintiff is informed and believe, and thereon alleges, that Defendants knew
7 or should have known that Plaintiff and Class Members were entitled to receive a ten-
8 minute, off-duty, uninterrupted rest period for every four (4) hours worked, or major
9 fraction thereof, or payment of one (1) additional hour of pay at their regular rate of
10 pay when they were not permitted to take a compliant rest period. Defendants enacted
11 quotas that prevented Plaintiff and Class Members from taking lawful rest periods.
12 During the Class Period, Plaintiff and Class Members regularly worked in excess of
13 four (4) hours or major fraction thereof. In violation of the Labor Code and IWC
14 Wage Orders, Plaintiff and Class Members were not permitted to take compliant rest
15 breaks, due to Defendants' unlawful policy and practice to favor production goals
16 over employee rights. Consequently, Plaintiff and Class Members were not
17 authorized or permitted to take rest breaks, including first, second, and third rest
18 breaks. Defendants failed to pay Plaintiff and Class Members one additional hour of
19 pay at their regular rate of pay when they did not receive a compliant rest break. On
20 information and belief, Defendants also failed to provide recovery periods to
21 employees. Defendants' quota requirements were unlawful and prevented employees
22 from complying with California laws regarding rest periods.

23 **54. Recovery Period Violations:** Defendants did maintain a policy of
24 providing recovery or permitted recovery periods or paying premium pay in lieu
25 thereof. Quota and performance demands were unreasonable and pressured Plaintiff
26 and Class Members to work through breaks including recovery periods. Plaintiff is
27 informed and believes, and thereon alleges, that Defendants knew or should have
28 known that Plaintiff and Class Members were entitled to receive recovery periods for

1 safety, including cooling-down, and heat prevention illness. Defendants, among other
2 reasons, enacted quotas that prevented Plaintiff and Class Members from taking
3 recovery periods. Consequently, Plaintiff and Class Members were not authorized or
4 permitted to take recovery periods which permit employees of a minimum of 5
5 minutes to “cool down.”. Defendants failed to pay Plaintiff and Class Members one
6 additional hour of pay at their regular rate of pay when they did not provide a recovery
7 period. On information and belief, Defendants also failed to provide recovery periods
8 to Class Members. Defendants’ quota requirements were unlawful and prevented
9 employees from complying with California laws regarding recovery periods.

10 55. **Waiting Time Penalties:** Plaintiff is informed and believes, and thereon
11 alleges, that Defendants knew or should have known that Plaintiff and Waiting Time
12 Subclass Members who separated from their employment with Defendants during the
13 statutory period were entitled to timely payment of all wages due. In violation of the
14 California Labor Code, Plaintiff and Waiting Time Class Members did not receive
15 payment of all wages owed upon separation within the permissible time period due
16 to, *inter alia*, Defendants’ failure to pay all wages and meal and rest period premiums
17 to Plaintiff and Class Members.

18 56. **Wage Statement Violations:** Plaintiff is informed and believes, and
19 thereon alleges that Defendants knew or should have known that Plaintiff and Class
20 Members were entitled to receive complete and accurate wage statements and failed
21 to abide by the requirements of California Labor Code § 226 to pay and record each
22 premium pay and meal and rest period violation which Defendants tracked and
23 recorded. In addition, Plaintiff and Class Members are entitled to payroll records and
24 signed records. In violation of the Labor Code and the IWC Wage Orders, Plaintiff
25 and Class Members were not furnished with complete and accurate wage statements,
26 signed records, and payroll records that show all of the information required by
27 California Labor Code §§ 226, 1198.5, and/or 432 including, but not limited to, the
28 gross and net wages earned, the total hours worked, all applicable hourly rates in

1 effect during the pay period, and the corresponding number of hours worked at each
2 hourly rate.

3 57. **California Labor Code §§ 2100 – 2112:** Defendants have willfully and
4 intentionally violated, among other claims, California’s warehouse workers and quota
5 laws as alleged below.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES**

8 **(Plaintiff and the Class Against all Defendants)**

9 58. Plaintiff hereby re-allege and incorporate by reference all paragraphs
10 above as though fully set forth herein.

11 59. Defendants failed to pay Plaintiff and Class Members all non-
12 discretionary bonuses and wages (including minimum, regular, overtime, and double
13 time wages) for all hours worked, including the correct legal minimum wage,
14 overtime and double overtime rate. On information and belief, Defendants
15 manipulated and deleted and or altered time entries without employees’ consent.

16 60. Defendants failed to pay Plaintiff and Class Members the correct legal
17 wages for all hours worked, including the correct legal minimum wage, overtime and
18 double overtime rate, premium wages, sick pay, and vacation pay when Defendants
19 paid bonuses.

20 61. Defendants failed to pay or vest sick pay wages in accordance with
21 California law.

22 62. Defendants failed to pay vacation pay law in California pursuant to
23 California Labor Code § 227.3.

24 63. At all times herein relevant, Defendants had a duty to comply with
25 California Labor Code §§ 204, 206, 227.3 ,510, 1182.12, 1194, 1194.2, 1197, 1198,
26 2802, the applicable IWC Wage Orders, and all applicable local minimum wage
27 ordinances in effect throughout California.

28 64. California Labor Code § 204 and the IWC Wage Orders require timely

1 payment of all wages owed on regularly scheduled paydays at least twice during each
2 calendar month, on days designated in advance by the employer as the regular
3 paydays. All wages earned in excess of the normal work period must be paid no later
4 than the payday for the next regular payroll period.

5 65. California Labor Code § 206 provides that in case of a dispute over
6 wages, the employer shall pay, without condition and promptly under the Labor Code
7 all wages conceded due, leaving to the employee all remedies he/she is otherwise
8 entitled to as to any balance claimed.

9 66. The IWC Wage Orders define “hours worked” as “the time during which
10 an employee is subject to the control of an employer and includes all time the
11 employee is suffered or permitted to work, whether or not required to do so” including
12 nonproductive time and legal wages when bonuses were paid.

13 67. Defendants failed to pay the correct reporting time pay in accordance
14 with California law.

15 68. California Labor Code § 510 and the IWC Wage Orders require that
16 employers pay employees for all overtime hours at a rate of one and one-half times
17 the employee’s regular rate of pay for hours worked in excess of eight hours in one
18 workday, 40 hours in one workweek, and after the first eight hours on the seventh
19 consecutive workday in one work week. California Labor Code § 510 and the IWC
20 Wage Orders further require that employers pay employees double their regular rate
21 of pay for hours work in excess of 12 hours in a workday and after eight hours on the
22 seventh consecutive workday in one workweek. California Labor Code § 510 requires
23 payment of overtime wages at one- and one-half times the “regular rate of pay,”
24 including split shift premium pay, reporting time pay, sick pay, and vacation pay.

25 69. California Labor Code § 1182.12 sets forth the minimum hourly wage
26 that must be paid to all employees in California for all hours worked. Local minimum
27 wage ordinances may provide for higher minimum wage rates that must be paid to
28 employees for all hours worked in those locales where each local ordinance is in

1 effect. California Labor Code § 1197 affirms that it is unlawful to pay less than the
2 state or local minimum wage, whichever is higher, for any hour of work.

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

9 71. California Labor Code § 1194.2 authorizes the recovery of liquidated
10 damages in an amount equal to the wages unlawfully unpaid and interest thereon for
11 unpaid wage violations.

12 72. California Labor Code § 1198 prohibits employers from employing for
13 longer hours or less favorable conditions than those set forth in the Labor Code, IWC
14 Wage Orders, or as otherwise set by the Labor Commissioner.

15 73. In violation of California law, Defendants have knowingly and willfully
16 refused to perform their obligations and compensate Plaintiff and Class Members for
17 all wages earned as alleged above.

18 74. Defendants' failure to pay Plaintiff and Class Members all earned
19 minimum and regular wages in accordance with California Labor Code §§ 204, 206,
20 510, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all
21 applicable local minimum wage ordinances in effect throughout California, Plaintiff
22 and Class Members are entitled to recover the full amount of unpaid wages, liquidated
23 damages, prejudgment interest, and statutory penalties, along with attorneys' fees and
24 costs in amounts that will be established at trial.

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28 **SECOND CAUSE OF ACTION**

1 **MEAL PERIOD VIOLATIONS**

2 **(Plaintiff and the Class Against all Defendants)**

3 75. Plaintiff hereby re-allege and incorporate by reference all paragraphs
4 above as though fully set forth herein.

5 76. At all relevant times, Defendants had a duty to comply with Labor Code
6 §§ 226.7 512, 2100-2112, and the applicable IWC Wage Orders.

7 77. California Labor Code § 512 and the IWC Wage Orders prohibit an
8 employer from employing any person for a work period of more than 5 hours per day
9 without providing the employee with a meal period of not less than 30 minutes
10 (commencing before the employee's fifth hour of work), except that if the total work
11 period per day is no more than 6 hours, the meal period may be waived by mutual
12 consent of the employer and employee. A second meal period of not less than
13 30 minutes is required if an employee works more than 10 hours per day and must
14 begin before the employee's tenth hour of work, except if the total hours worked is
15 no more than 12 hours, the second meal period may be waived by mutual consent of
16 the employer and employee, but only if the first meal period was not waived. An
17 employer must relieve an employee of all duties during meal periods.

18 78. The applicable IWC Wage Orders state that "[u]nless the employee is
19 relieved of all duty during a 30-minute meal period, the meal period shall be
20 considered an 'on duty' meal period and counted as time worked."

21 79. California Labor Code § 226.7(b) and the IWC Wage Orders prohibit an
22 employer from requiring any employee to work during a meal period mandated by
23 any California statute, regulation, standard or order. If an employer fails to provide
24 an employee with a meal period in accordance with state law, California Labor Code
25 § 226.7(c) and the IWC Wage Orders require that the employer pay the employee one
26 additional hour of pay at the employee's regular rate of compensation for each
27 workday that the meal period is noncompliant.

28 80. During the Class Period, Plaintiff and Class Members did not receive

1 compliant meal periods when working more than five (5) and/or 10 hours per day
2 because Defendants provided only about two (1) rest breaks per workweek. As such,
3 Defendants failed to provide Plaintiff and Class Members with all required meal
4 periods, including second meal periods.

5 81. During the relevant time period, Defendants failed to pay Plaintiff and
6 Class Members meal period premiums for noncompliant meal periods pursuant to
7 California Labor Code § 226.7(b) and the applicable IWC Wage Order.

8 82. As a result of Defendants' failure to provide compliant meal periods and
9 pay meal period premiums to Plaintiff and Class Members in accordance with the
10 IWC Wage Orders and California Labor Code §§ 226.7 and 512, Plaintiff and Class
11 Members suffered and continue to suffer a loss of wages and compensation.

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

17 84. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff will
18 also seek attorneys' fees and costs from Defendants in an amount subject to proof and
19 approved by the Court.

20 **THIRD CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(Plaintiff and the Class Against all Defendants)**

23 85. Plaintiff hereby re-allege and incorporate by reference all paragraphs
24 above as though fully set forth herein.

25 86. At all relevant times, Defendants had a duty to comply with California
26 Labor Code §§ 226.7, 2100 *et. seq.* and the applicable IWC Wage Orders.

27 87. The IWC Wage Orders require employers to authorize and permit all
28 employees to take 10-minute duty-free rest periods for each four hours worked, or

major faction thereof.

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

89. During the relevant time period, Defendants did not implement a compliant rest break policy or practice by providing only one (1) break per workday. As such, Defendants failed to provide Plaintiff and Class Members with all required rest periods, including second and third rest periods.

90. During the relevant time period, Defendants failed to pay Plaintiff and Class Members rest period premiums for noncompliant rest periods pursuant to California Labor Code § 226.7(b) and the applicable IWC Wage Order.

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

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

93. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff will also seek attorneys' fees and costs from Defendants in an amount subject to proof and approved by the Court.

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FOURTH CAUSE OF ACTION

RECOVERY PERIOD VIOLATIONS
(Plaintiff and the Class Against all Defendants)

94. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

95. California Labor Code § 226.7 provides that employers must authorize and permit non-exempt employees to take recovery periods.

96. California Labor Code § 226.7, subdivision (b), provides that if an employer fails to provide employees with recovery periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the recovery period is not provided.

97. Due to Defendants' uniform policies and practices, Plaintiff and Plaintiff Class consistently worked without receiving a duty-free, uninterrupted recovery period as required by the Labor Code. Plaintiff and Plaintiff Class did not receive premium pay for the unprovided recovery periods.

98. On information and belief, Defendants required employees to take recovery periods during meal and/or rest periods regardless of the risk to health and safety. When employees communicated that they required a cooling down time, they were ignored.

99. Defendants also failed to disclose to class members that they are entitled to recovery periods of at least 5 minutes for heat illness and for "cooling down." Plaintiff and Class Members are routinely exposed to extreme temperatures in violation of California law including CalOSHA regulations. Plaintiff and Class Members routinely requested recovery periods as a result of exhaustion, heat, and other safety related issues and were denied recovery periods.

100. Plaintiff and Plaintiff Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to California Labor Code § 218.5, California Code of Civil Procedure § 1021.5, and

1 any other provision of law, Plaintiff requests the court award reasonable attorneys’
2 fees and costs incurred by them in this action.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PRODUCE WAGE STATEMENTS (PAYROLL RECORDS)**
5 **(Plaintiff and Class Against Defendants)**

6 101. Plaintiff repeats and incorporates by reference all allegations in this
7 Complaint as though fully set forth herein.

8 102. California Labor Code § 226(a) requires employers to keep copies of an
9 employee’s accurate itemized statements (also known as: pay stubs) on file for at least
10 three years. 38. California Labor Code § 226(b) states, in pertinent part, “An employer
11 that is required by this code or any regulation adopted pursuant to this code to keep
12 the information required by subdivision (a) shall afford current and former employees
13 the right to inspect or receive a copy of records pertaining to their employment, upon
14 reasonable request to the employer.”

15 103. California Labor Code § 226(c) states, in pertinent part, “An employer
16 who receives a written or oral request to inspect or receive a copy of records pursuant
17 to subdivision (b) pertaining to a current or former employee shall comply with the
18 request as soon as practicable, but no later than 21 calendar days from the date of the
19 request.”

20 104. California Labor Code § 226(f) states, “A failure by an employer to
21 permit a current or former employee to inspect or receive a copy of records within the
22 time set forth in subdivision (c) entitles the current or former employee or the Labor
23 Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the
24 employer.

25 105. California Labor Code § 226(h) states, “An employee may also bring an
26 action for injunctive relief to ensure compliance with this § and is entitled to an award
27 of costs and reasonable attorney’s fees.

28 106. Upon information and belief, Defendants instituted a uniform and

1 systematic practice of denying current and/or former employees the right to inspect
2 and receive a complete copy of personnel records required to be maintained and
3 produced under Section 226.

4 107. Plaintiff requested wage statements and payroll records. Plaintiff' legal
5 counsel requested Plaintiff's personnel and quota disclosure pursuant to the California
6 Labor Code §§ 226, 432, 2104.

7 108. Per California Labor Code § 226(c), Defendants were required to
8 produce Plaintiff' payroll records, quota disclosures, and wage statements to their
9 legal counsel within 21-days from the date of the written request and within 15 days
10 for quota disclosures.

11 109. Defendants failed to produce Plaintiff' complete payroll records and
12 wage statements by the due date or anytime thereafter.

13 110. Defendants failed to comply with their production obligations to Plaintiff
14 under California Labor Code § 226(c). 47. Defendants violated California Labor Code
15 § 226(c) with respect to Plaintiff and similarly situated Class Members, entitling them
16 to a \$750.00 penalty plus reasonable attorney's fees and costs, and injunctive relief,
17 from Defendants for this violation per California Labor Code § 226(f) and (h).

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE PERSONNEL RECORDS**

20 **(Plaintiff and the Class against All Defendants)**

21 111. Plaintiff realleges and incorporates by reference all preceding paragraphs
22 herein, as if fully alleged.

23 112. California Labor Code § 1198.5(a) states, "Every current and former
24 employee, or his or her representative, has the right to inspect and receive a copy of
25 the personnel records that the employer maintains relating to the employee's
26 performance or to any grievance concerning the employee."

27 113. California Labor Code § 1198.5(b)(1) states, in pertinent part, "The
28 employer shall make the contents of those personnel records available for inspection

1 to the current or former employee, or his or her representative...not later than 30
2 calendar days from the date the employer receives a written request[.]”An employer
3 must also provide attendance records in response to a California Labor Code § 1198.5
4 request.¹ 51. Per the DLSE, “[c]ategories of records that are generally considered to
5 be personnel records are those that are used or have been used to determine an
6 employee’s qualifications for promotion, additional compensation, or disciplinary
7 action, including termination.” Such records include but are not limited to:

8 (a) Applications for employment;

9 (b) Payroll authorization forms;

10 (c) Notices of commendation, warning, discipline, and/or termination;

11 (d) Notices of layoff, leave of absence, and vacation;

12 (e) Notices of wage attachment or garnishment;

13 (f) Education and training notices and records;

14 (g) Performance appraisals/reviews; and,

15 (h) Attendance records

16 114. California Labor Code § 1198.5(k) states, “If an employer fails to permit
17 a current or former employee, or his or her representative, to inspect or copy personnel
18 records within the times specified in this §, or times agreed to by mutual agreement
19 as provided in this §, the current or former employee or the Labor Commissioner may
20 recover a penalty of seven hundred fifty dollars (\$750) from the employer.”

21 115. California Labor Code § 1198.5(l) states, “A current or former employee
22 may also bring an action for injunctive relief to obtain compliance with this § and may
23 recover costs and reasonable attorney’s fees in such an action.”

24 116. Upon information and belief, Defendants instituted a uniform and
25 systematic practice of denying current and/or former employees the right to inspect
26 and receive a complete copy of personnel records required to be maintained and
27 produced under Section 1198.5.

28 117. Plaintiff requested her personnel file, among other items, via her legal

1 Counsel in accordance with California Labor Code §§ 226, 1198.5(b)(1).

2 118. Per California Labor Code § 1198.5(b)(1), Defendants were required to
3 produce Plaintiff' personnel records to their legal counsel within 21 or 30-days from
4 the date of the request.

5 119. Defendants failed to produce Plaintiff' complete personnel records and
6 attendance records within the legally prescribed time frame. Plaintiff and similarly
7 situated Class Members are entitled to a \$750.00 penalty plus reasonable attorney's
8 fees and costs, and injunctive relief, from Defendants for this violation per California
9 Labor Code 1198.5(k) and (l).

10 120. Plaintiff also requested the disclosures pursuant to California Labor
11 Code § 2104. More than 15 days have passed, and the disclosures have not been
12 provided.

13 121. As of the writing of this complaint, Defendants has failed to comply with
14 California Labor Code §§ 2100 *et. seq.*

15 122. Defendants' policy (Defendants' HR and its third-party service providers
16 require former employees to call, email, take action in addition to what is required by
17 the Labor Code) as alleged herein, is illegal on its face. On information and belief,
18 Defendants enforces this illegal policy against former employees and has engaged in
19 this illegal conduct throughout the Class Period.

20 123. As such, Plaintiff and Class Members are forced to both file a lawsuit
21 and/or file for injunctive relief to compel Defendants to comply with California law
22 pursuant to California Labor Code §§ 2100 - 2112.

23 124. Plaintiff and Plaintiff Class are entitled to damages in an amount equal
24 to \$750.00 plus attorney fees and costs, injunctive relief and other damages in a sum
25 to be proven at trial. Pursuant to California Labor Code §§ 226(f), 218.5, Code of Civil
26 Procedure § 1021.5, and any other provision of law, Plaintiff requests the court award
27 reasonable attorneys' fees and costs incurred by them in this action.

28 **SEVENTH CAUSE OF ACTION**

1 **FAILURE TO PRODUCE SIGNED RECORDS CALIFORNIA LABOR**
2 **CODE § 432**
3 **(Plaintiff and Class Against Defendants)**

4 125. Plaintiff repeats and incorporates by reference all allegations in this
5 Complaint as though fully set forth herein.

6 126. California Labor Code § 432 states, “If an employee or applicant signs
7 any instrument relating to the obtaining or holding of employment, he shall be given
8 a copy of the instrument upon request.”

9 127. Upon information and belief, Defendants instituted a uniform and
10 systematic practice of denying current and/or former employees the right to inspect
11 and receive a complete copy of personnel records required to be maintained and
12 produced under § 432.

13 128. Plaintiff requested a copy of her signed instrument and records per
14 California Labor Code § 432. While Defendant has produced some signed records,
15 Plaintiff asserts the production was incomplete and thus violates California Labor
16 Code § 432.

17 129. Defendants seeks to illegally dismiss Plaintiff’s and Class Members’
18 claims related to California Labor Code §§ 2100 *et. seq.* However, Defendants failed
19 to produce any evidence that it complies with the written quota disclosures of the
20 quota law codes and which Defendants will be unable to produce a signed compliant
21 record. The records have been requested and Defendants have not complied with the
22 law.

23 130. Defendants’ policies and practices are in violation of California Labor
24 Code § 432. Plaintiff and similarly situated Class Members are entitled to injunctive
25 relief to address these violative policies.

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28 **EIGHTH CAUSE OF ACTION**

**FAILURE TO IMPLEMENT HEAT PREVENTION MEASURES &
MAINTAIN LEGAL TEMPERATURE CONTROLS
(Plaintiff and Class Against Defendants)**

131. Plaintiff repeats and incorporates by reference all allegations in this Complaint as though fully set forth herein.

132. Under California law, the workplace should not be a source of injury or illness or threaten the Lives of those who work there, (Cal. Code Reg. tit. 8, § 3203.). Per Senate Bill 1167 signed and approved by Governor Jerry Brown and later codified as California Labor Code § 6720, the California Division of Occupational Safety and Health (Cal/OSHA) shall propose an indoor heat illness standard by January 1, 2019. In Cal/OSHA's most recent January 29, 2019, revised draft standard, the proposed regulation would apply to "all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present." The U.S. Department of Labor's Division of Occupational Safety and Health Administrator (OSHA) also recommends office temperature control in the range of 68° F to 76° F.

133. On information and belief, DEFENDANT violated every aspect of IWC Wage Order § 15. Plaintiff and other Class Members being subjected to excessive heat or cold in the workplace. Plaintiff worked in a facility situated in a location with recorded temperatures exceeding 100 F and dipping below 30 F. DEFENDANT failed to provide reasonable temperature regulation including adequate air conditioning, heating, insulation, and/or ventilation. DEFENDANT failed to provide reasonably comfortable indoor temperatures. On information and belief, where Defendant's business operations created indoor climates less than 60 F, such as areas in the warehouse designed to keep perishables like food, Defendant failed to provide appropriate heated rooms to retire for warmth. Defendant also failed to maintain a temperature of not less than 68° in their toilet rooms, resting rooms, and/or change rooms during hours of use.

1 134. Plaintiff and Class Members were prevented from complying with
2 health, CalOSHA, and safety laws; Defendants failed to maintain temperature
3 controls as required by California Labor Code §§ 2102 *et. seq.*, and the applicable
4 IWC Wage Order(s). As such, Plaintiff and, on information and belief, Class
5 Members suffered exhaustion, dehydration and other physiological injuries because
6 they were required to meet Defendants' unlawful quotas and prevented them from
7 complying with the IWC Wage Orders § 15 which states:

8 **15. TEMPERATURE**

9 (A) *The temperature maintained in each work area shall provide*
10 *reasonable comfort consistent with industry-wide standards for the*
11 *nature of the process and the work performed.*

12 (B) *If excessive heat or humidity is created by the work process, the*
13 *employer shall take all feasible means to reduce such excessive heat or*
14 *humidity to a degree providing reasonable comfort. Where the nature of*
15 *the employment requires a temperature of less than 60° F., a heated*
16 *room shall be provided to which employees may retire for warmth, and*
17 *such room shall be maintained at not less than 68°.*

18 (C) *A temperature of not less than 68° shall be maintained in the toilet*
19 *rooms, resting rooms, and change rooms during hours of use.*

20 (D) *Federal and State energy guidelines shall prevail over any*
21 *conflicting provision of this section.*

22 135. Pursuant to Section 15(b), Defendant has and have always had an
23 affirmative duty to prevent and reduce excessive heat or humidity created by the work
24 environment, location, department or any other area of work that creates excessive
25 heat and where employees are exposed to heat illness thereby requiring safety
26 measures including, but not limited, to recovery periods. Defendant, however, has no
27 written policy regarding preventative measures as required by California, by
28 California Labor Code § 226.7, and/or the recently enacted OSHA standards requiring

1 employers to take affirmative measures to prevent heat illness for indoor employees
2 pursuant to California Code of Regulations, Title 8, § 3395 Heat Illness Prevention,
3 California Labor Code §§ 6308, 6317 and any other statutes conferring enforcement
4 powers upon the Division.

5 136. Furthermore, it is a violation of California Labor Code §§ 98.6, 98.7,
6 6310, 6311, and 6312 to discharge or discriminate in any other manner against
7 employees for exercising their rights under this or any other provision offering
8 occupational safety and health protection to employees. Throughout the time periods
9 when these laws were in effect, Defendants have actively violated them and pressured,
10 and/or discouraged employees from taking advantage of the Labor Code, Cal OSHA
11 regulations and California law in favor of meeting excessive quotas.

12 137. Furthermore, it is a violation of California Labor Code §§ 98.6, 98.7,
13 6310, 6311, and 6312 to discharge or discriminate in any other manner against
14 employees for exercising their rights under this or any other provision offering
15 occupational safety and health protection to employees. Throughout the time periods
16 when these laws were in effect, Employer has actively violated them and pressured,
17 and/or discouraged employees from taking advantage of the Labor Code, Cal OSHA
18 regulations and California law in favor of meeting excessive quotas.

19 138. Plaintiff, Class Members, and Class Members are entitled to injunctive
20 relief and recovery of attorneys' fees and costs incurred.

21 **NINTH CAUSE OF ACTION**

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

23 **(Plaintiff and the Class Against all Defendants)**

24 139. Plaintiff hereby re-allege and incorporate by reference all paragraphs
25 above as though fully set forth herein.

26 140. At all relevant times, Defendants had a duty to comply with California
27 Labor Code § 226.

28 141. California Labor Code § 226(a) requires that, semimonthly or at the time

1 of each payment of wages, employers must furnish each employee with an accurate
2 itemized wage statement in writing that accurately shows (1) gross wages earned,
3 (2) total number of hours worked, (3) the number of any piece-rate units earned and
4 all applicable piece rates, (4) all deductions made from wages, (5) net wages earned,
5 (6) the inclusive dates of the pay period, (7) the name and last four digits or
6 employment identification number of the employee, (8) the name and address of the
7 legal entity that is the employer, and (9) all applicable hourly rates in effect and the
8 corresponding number of hours worked at each hourly rate. Defendants failed to
9 include in wage statements all hours worked and accumulated vacation, sick pay, split
10 shifts and record reporting time pay.

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

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

23 144. As a result of Defendants' violations of California Labor Code § 226(a),
24 Plaintiff and Class Members have suffered injury and damage to their statutorily
25 protected rights. Specifically, Plaintiff and Class Members have been injured by
26 Defendants' intentional violation of California Labor Code § 226(a) because they
27 were denied both their legal right to receive, and their protected interest in receiving,
28 accurate itemized wage statements under California Labor Code § 226(a). Plaintiff

1 had to file this lawsuit in order to determine the extent of the underpayment of wages,
2 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have
3 had to engage in these efforts and incur these costs had Defendants provided the
4 accurate wages earned. This has also delayed Plaintiff' ability to demand and recover
5 the underpayment of wages from Defendants.

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

13 146. Plaintiff and Plaintiff Class are entitled to damages in an amount equal
14 to one (1) hour of wages per unprovided recovery periods, in a sum to be proven at
15 trial. Pursuant to Labor Code § 218.5, Code of Civil Procedure § 1021.5, and any
16 other provision of law, Plaintiff requests the court award reasonable attorneys' fees
17 and costs incurred by them in this action.

18 147. Plaintiff and Class Members are also entitled to injunctive relief under
19 California Labor Code § 226(h), compelling Defendants to comply with California
20 Labor Code § 226, and seek the recovery of attorneys' fees and costs incurred in
21 obtaining this injunctive relief.

22 **TENTH CAUSE OF ACTION**

23 **WAITING TIME PENALTIES**

24 **(Plaintiff and the Class Against all Defendants)**

25 148. Plaintiff hereby re-allege and incorporate by reference all paragraphs
26 above as though fully set forth herein.

27 149. At all relevant times, Defendants had a duty to comply with California
28 Labor Code §§ 201, 202, and 203. Defendants failed to comply with these final

1 paycheck requirements with respect to Plaintiff and Waiting Time Subclass Members.

2 150. California Labor Code § 201 requires that if an employer discharges an
3 employee, the wages earned and unpaid at the time of discharge are due and payable
4 immediately.

5 151. California Labor Code § 202 requires that if “an employee not having a
6 written contract for a definite period” quits, the employee’s wages shall become due
7 and payable no later than 72 hours thereafter, unless the employee has given 72 hours
8 previous notice of his or her intention to quit, in which case the employee is entitled
9 to his or her wages at the time of quitting.

10 152. California Labor Code § 203 provides that if an employer willfully fails
11 to pay, without abatement or reduction, any wages of an employee who is discharged
12 or quits, the wages of the employee shall continue as a penalty from the due date
13 thereof at the same rate until paid or until an action therefor is commenced, but that
14 the wages shall not continue for more than 30 days per employee.

15 153. During the relevant time period, Defendants willfully failed to pay
16 Plaintiff and Waiting Time Subclass Members all their earned wages upon
17 termination including, but not limited to, minimum, regular, overtime, and double
18 time compensation, and premium compensation either at the time of discharge or
19 within 72 hours of leaving Defendants’ employ.

20 154. As a result of Defendants’ failure to timely pay all wages owed to
21 Plaintiff and Waiting Time Subclass Members in accordance with California Labor
22 Code §§ 201, 202 and 203, Plaintiff and Waiting Time Subclass Members are entitled
23 to recover waiting time penalties, prejudgment interest, attorneys’ fees, and costs in
24 amounts that will be established at trial.

25 //

26 //

27 **ELEVENTH CAUSE OF ACTION**

28 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

1 **(Plaintiff and the Class Against all Defendants)**

2 155. Plaintiff incorporates all previous paragraphs of this Complaint as
3 though fully set forth herein.

4 156. Pursuant to California Labor Code §2802, Defendants are required to
5 reimburse Plaintiff for business expenses incurred in the direct consequences of her
6 discharge of her duties for Defendants, including expenses associated with the
7 purchase of equipment. Plaintiff and Class Members were required to purchase vests
8 and sundry items and use their personal cell phone for the benefit of Defendant.

9 157. Within the four years before the filing of this Complaint and continuing
10 until the present time, Plaintiff and Class Members have been required to incur
11 expenses as a condition of and in the discharge of their employment duties and has
12 thereby incurred expenses for these items.

13 158. Defendants have failed to reimburse Plaintiff and Class Members for
14 said expenses.

15 159. Pursuant to California Labor Code, § 2802, subsection (a), Plaintiff will
16 seek to recover work related expenses for herself and the putative class. Pursuant to
17 California Labor Code, § 2802, subsection (b), Plaintiff will seek attorneys' fees and
18 litigation costs in an amount subject to proof and approved by the Court.

19 **TWELFTH CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA'S QUOTA LAW**

21 **(Plaintiff and the Class Against all Defendants)**

22 160. Plaintiff hereby re-allege and incorporate by reference all paragraphs
23 above as though fully set forth herein.

24 161. At all relevant times, Defendants had a duty to comply with California
25 Labor Code §§ 2100 *et seq.*

26 162. **Defendants Failed to Disclose Quotas & Enforces Silent Quotas**
27 **Which Have Not Been Disclosed:** Starting January 1, 2022, Defendants were
28 required to provide each new hire a written description of each quota the Defendants

1 required Plaintiff and Putative Class Members to work under. This includes the
2 number of tasks to be performed or materials that must be produced or handled
3 within a time period, and any potential adverse employment action that could result
4 from failing to meet quotas as defined by California Labor Code Section 2100 *et.*
5 *seq.*

6 163. Plaintiff and Putative Class Members routinely worked more than
7 twelve hours in Defendants' warehouses and logistics centers throughout California
8 and strictly enforced its unlawful quotas. Defendants knew they had a duty to
9 disclose written quotas in compliance with California's quota laws and failed to
10 comply with its legal duty despite the advice of its legal counsel.

11 164. Defendants have the financial ability to comply with California's quota
12 laws, but willfully, knowingly and intentionally refuse to comply despite its profit
13 and financial strength. Plaintiff is informed and believes, and thereon alleges, that at
14 all times herein mentioned, Defendants were advised by skilled lawyers, employees,
15 and other professionals who were knowledgeable about California's wage and hour
16 laws, employment and personnel practices, and the requirements of California law.

17 165. Plaintiff is informed and believes, and thereon alleges, that Defendants
18 knew or should have known they imposed systematic quota and production demands
19 on Plaintiff and Putative Class Members which violated the rights of employees
20 pursuant to California Labor Code §§ 2100 *et. seq.* DEFENDANTS knows and has
21 known at all times herein referenced that it requires and required Plaintiff and
22 Putative Class Members "...to meet a quota that prevents compliance with meal or
23 rest breaks, use of bathroom facilities, including reasonable travel time to and from
24 bathroom facilities, or occupational health and safety laws in the Labor Code or
25 division standards" in violation of California Labor Code § 2102.

26 166. Furthermore, Defendants implement and maintain quotas that have not
27 been disclosed to Plaintiff or Class Members in violation of California Labor Code §
28 2102. As such, Plaintiff and Class members cannot be required to meet undisclosed

1 quotas and Defendants cannot take adverse action against Plaintiff who was
2 terminated for suffering injury as a result of unlawful quotas. On information and
3 belief, Defendants have a policy of retaliating or terminating employees who suffer
4 injury and/or who are perceived to be unproductive because they have suffered
5 injury and thus unable to meet quotas. Defendant is taking adverse employment
6 action against employees in violation of Labor Code § 2102 for “*failure to meet a*
7 *quota that does not allow a worker to comply with meal and rest periods, or*
8 *occupational health and safety laws in the Labor Code or division standards, or for*
9 *failure to meet a quota that has not been disclosed to the employee pursuant.*”

10 167. ***Illegal Quotas Created Safety/OSHA Risks and/or Increased Injury***
11 ***Rates:*** Plaintiff was injured as a direct result of unlawful quotas. On information
12 and belief, hundreds of employees have suffered quota related injuries SINCE
13 January 1, 2022. On information and belief, DEFENDANTS unwritten policy,
14 which is implemented through supervisors and managers, is to eliminate injured
15 employees. While DEFENDANTS sometimes offers light duty positions and tasks
16 the reality is injured employees were targeted for elimination for one well known
17 reason: the perception and false belief that injured employees could not meet
18 Defendants’ illegal quotas. Ultimately, injured employees are categorized as
19 unproductive employees and are terminated for “low performance.”

20 168. DEFENDANTS willfully, knowingly and intentionally failed to
21 establish quotas that did not harm Plaintiff and Putative Class Members in order to
22 increase Defendants’ profits without concern for employee safety. Defendants’
23 quotas required Plaintiff and Putative Class Members, to meet quantified work and
24 production targets and quotas relating to their warehouse duties.

25 169. ***DEFENDANTS’ Warehouse Employees are Covered Employees:***
26 DEFENDANTS is a covered employer and maintains, implements, and enforces
27 illegal quotas. Plaintiff and Putative Class Members are subject to quotas and are
28 protected by California Labor Code § 2100(h) which states:

1 "Quota" means a work standard under which an employee is assigned or
2 required to perform at a specified productivity speed, or perform a quantified
3 number of tasks, or to handle or produce a quantified amount of material, within a
4 defined time period and under which the employee **may suffer an adverse**
5 **employment action if they fail to complete the performance standard.**"

6 (Emphasis added)

7 170. DEFENDANTS measures, analyzes, stores, evaluates and/or rates
8 warehouse employees' performance based on employee work speed data and
9 subsequently takes adverse action against them for failing to meet undisclosed
10 quotas. California Labor Code § 2100 states:

11 ***(e)(1) "Employee work speed data" means information an employer collects,***
12 ***stores, analyzes, or interprets relating to an individual employee's***
13 ***performance of a quota, including, but not limited to, quantities of tasks***
14 ***performed, quantities of items or materials handled or produced, rates or***
15 ***speeds of tasks performed, measurements or metrics of employee performance***
16 ***in relation to a quota, and time categorized as performing tasks or not***
17 ***performing tasks.(2) "Employee work speed data" does not include***
18 ***qualitative performance assessments, personnel records, or itemized wage***
19 ***statements pursuant to § 226, except for any content of those records that***
20 ***includes employee work speed data as defined in this part."***

21 (emphasis added)

22 171. Defendants store, track, and analyze employees' speed data to measure
23 performance and takes adverse employment action against employees in violation of
24 Labor Code § 2102, which states:

25 ***§ 2102 - Employees not required to meet improper quotas***

26 ***An employee shall not be required to meet a quota that prevents compliance***
27 ***with meal or rest breaks, use of bathroom facilities, including reasonable***
28 ***travel time to and from bathroom facilities, or occupational health and safety***

1 *laws in the Labor Code or division standards. An employer shall not take*
2 *adverse employment action against an employee for failure to meet a quota*
3 *that does not allow a worker to comply with meal and rest breaks, or*
4 *occupational health and safety laws in the Labor Code or division standards,*
5 *or for failure to meet a quota that has not been disclosed to the employee*
6 *pursuant to § 2101.*

7 172. Plaintiff and Putative Class Members, as alleged throughout this
8 complaint, were required to meet excessive quotas. DEFENDANTS could comply
9 with the law by complying with the law and refuse to do so. DEFENDANTS claim
10 they do not have, maintain, implement, or require quotas of any of its warehouse
11 employees.

12 173. ***Defendants Change Quotas Regularly and Fail to Disclose New***
13 ***Quotas:*** DEFENDANTS failed to advise and/or disclose to new hires the written
14 quota description as required by California Labor Code § 2101. Moreover,
15 DEFENDANTS changes its quotas regularly and does not provide a written
16 disclosure to warehouse employees after each quota is updated or changed.

17 174. DEFENDANTS failed to disclose Plaintiff's quota after he demanded
18 his written disclosures pursuant to Labor Code § 2104, which states:

19 ***§ 2104 - Employee requests for written descriptions***

20 ***(a)(1) If a current or former employee believes that meeting a quota caused a***
21 ***violation of their right to a meal or rest break or required them to violate any***
22 ***occupational health and safety laws in the Labor Code or division standards,***
23 ***they have the right to request, and the employer shall provide, a written***
24 ***description of each quota to which the employee is subject and a copy of the***
25 ***most recent 90 days of the employee's own personal work speed data.***

26
27 ***(a)(2) If a former employee requests a written description of the quotas to***
28 ***which they were subject and a copy of their own personal work speed data***

1 pursuant to paragraph (1), the employer shall provide 90 days of the former
2 employee's quotas and personal work speed data for the 90 days prior to the
3 date of the employee's separation from the employer.(3) A former employee is
4 limited to one request pursuant to this subdivision.

5
6 **(b)** An employer that receives a written or oral request for information
7 pursuant to subdivision (a) shall comply with the request as soon as
8 practicable, but no later than 21 calendar days from the date of the request.

9 175. Plaintiff, through their Counsel of record, served on Defendants a
10 demand for a written description of the quotas they were subject to. Defendants
11 ignored their request. More than 15 days have passed since the request for a written
12 description and Defendants refuses to comply with the law. As such, Plaintiff is
13 forced to both file a lawsuit and/or file for injunctive relief for herself and on behalf
14 of Class Members.

15 176. **Quotas Interfered with Employees' Use of Bathroom Facilities:**
16 Plaintiff and Class Members were restricted in their ability to use the bathroom
17 facilities as a result of Defendants' unlawful quota requirements, as alleged herein
18 and above. Employees were monitored by Defendants' leads and/or supervisors
19 and were instructed to minimize the use of the bathroom facilities or were restricted
20 to use bathroom facilities until the designated break time. As such, DEFENDANTS
21 violated California Labor Code §§ 2100 *et. seq.*

22 177. **Illegal Quotas Created Safety/OSHA Risks and/or Increased Injury**
23 **Rates:** On information and belief, hundreds of employees have suffered quota
24 related injuries. On information and belief, DEFENDANTS' unwritten policy,
25 which is implemented through supervisors and managers, is to eliminate injured
26 employees. While DEFENDANTS sometimes offer light duty positions and tasks
27 the reality is injured employees were targeted for elimination for one well known
28 reason: the perception and false belief that injured employees could not meet

1 Defendants' illegal quotas. Ultimately, injured employees are categorized as
2 unproductive employees and are terminated for "low performance."

3 178. ***Quotas Adversely Impacted Meal & Rest Periods:*** Defendants knew
4 that Plaintiff, Class Members, and Class Members were entitled to receive legal
5 meal periods. Defendants enacted quotas that prevented Plaintiff and Putative Class
6 Members from complying with California's meal period laws. During the Class
7 Period, Plaintiff and Putative Class Members regularly worked in excess of five (5)
8 and/or 10 hours per workday. In violation of the California Labor Code and IWC
9 Wage Orders, Plaintiff and Putative Class Members did not receive compliant
10 lunches because of Defendants' unlawful quotas.

11 179. DEFENDANTS maintained excessive quota demands which interfered
12 with Plaintiff and Putative Class Members' ability to take legal meal periods and in
13 fact it prevented them from complying with California law regarding lunches. For
14 example, employees were monitored, reprimanded, and discouraged from taking
15 meal periods. Employees were required under the penalty of reprimand or
16 termination to clock in and out for meal periods. This ruse was implemented and
17 required by DEFENDANTS for unlawful purposes. In reality, the unwritten meal
18 period policy was to work through meal period or punished. If DEFENDANTS can
19 demonstrate employees clocked in and out for lunch, then it can falsely argue that it
20 did comply with California law in defending the many lawsuits accusing it of
21 violating California breaks' laws. The reality was, is, and will continue to be that
22 Defendants' quotas are excessive and can only be met if Plaintiff and Class
23 Members work through meal periods or take shortened meal periods.

24 180. **On Duty/On Call Breaks:** Defendants also violated Labor Code §
25 2103 because it required and continues to require on duty or on call breaks and
26 routinely interrupted breaks. DEFENDANTS know when warehouse employees are
27 working through breaks to meet quotas in violation of Labor Code § 2103 which
28 states, "*(n)otwithstanding subdivision (a), consistent with existing law, meal and*

1 rest breaks are not considered productive time unless the employee is required to
2 remain on call.” Cal. Lab. Code § 2103.

3 181. Plaintiff and Putative Class Members were regularly and routinely
4 required to remain on call to meet quotas. Defendants required employees to
5 regularly monitor quota statistics and receive and respond to messages when on
6 breaks.

7 182. ***Quotas Adversely Impacted Class Members Right to Take Legal Rest***
8 ***Breaks:*** Defendants knew that Plaintiff, Class Members, and Class Members were
9 entitled to legal rest breaks. Defendants enacted quotas that prevented Plaintiff and
10 Putative Class Members from complying with California rest period laws.

11 183. On information and belief, DEFENDANTS take adverse employment
12 action against employees who choose and/or insist on a legal rest break. Class
13 Members were monitored, reprimanded, and discouraged from using bathroom
14 facilities until their designated time for rest breaks. However, this policy and
15 practice was implemented and encouraged by DEFENDANTS’ supervisory and/or
16 managerial personnel such that if Class Members worked through rest break or took
17 shortened rest breaks, they could meet Defendants’ quota requirements.

18 184. Defendants also implemented an illegal policy requiring Plaintiff and
19 Putative Class Members to “waive” meal periods. Plaintiff and Putative Class
20 Members were required to sign meal period waivers when in fact many employees
21 did not want to sign waivers because they wanted a break. Plaintiff and, on
22 information and belief, many Class Members also complained about Defendants’
23 unlawful breaks policies, as evidenced by the dozens of lawsuits for breaks
24 violations, and faced retaliation and termination in violation of California Labor
25 Code § 2105 which states:

26 **§ 2105 - Rebuttable presumption of unlawful retaliation for**
27 **adverse action against employees; conditions**

28 *For purposes of this part, there shall be a rebuttable*

1 *presumption of unlawful retaliation if an employer in any*
2 *manner discriminates, retaliates, or takes any adverse action*
3 *against any employee within 90 days of the employee doing*
4 *either of the following:*

5
6 *(a) Initiating the employee's first request in a calendar year for*
7 *information about a quota or personal work speed data*
8 *pursuant to subdivision (a) of § 2104.*

9 *(b) Making a complaint related to a quota alleging any*
10 *violation of §§ 2101 to 2104, inclusive, to the commissioner, the*
11 *division, other local or state governmental agency, or the*
12 *employer.*

13 185. **Injunctive Relief:** Plaintiff and Putative Class Members were and
14 continue to labor under the constant threat of Defendants' adverse employment
15 action in violation of California Labor Code §§ 2100 *et. seq.*

16 186. Defendants knew or should have known that their quotas were and
17 continue to be illegal. Defendants new and know their quotas require Plaintiff and
18 Putative Class Members to expose themselves to OSHA hazards and other safety
19 hazards. Defendants have been sued many times for violating California's wage and
20 hour laws. Despite prior, current and future litigation, Defendants will continue to
21 violate California's quota laws absent a jury award in Plaintiff and Class Members'
22 favor.

23 187. Plaintiff and Class Members are entitled to injunctive relief under
24 California Labor Code § 2108, compelling Defendants to comply with California
25 Labor Code §§ 2100 *et. seq.*, and seek the recovery of attorneys' fees and costs
26 incurred in obtaining this injunctive relief.

27 **THIRTEENTH CAUSE OF ACTION**

28 **UNFAIR BUSINESS PRACTICES**

(Plaintiff and the Class Against all Defendants)

188. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

189. Plaintiff brings this claim individually and on behalf of Class Members.

190. California Business & Professions Code § 17200 (“UCL”) prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

191. California Business and Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the UCL.

192. California Labor Code § 90.5, subdivision (a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

193. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this complaint, Defendants have committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business practices and acts described in this complaint, including, but not limited to, violations of California Labor Code §§ 201-204, 206, 226, 226.7, 227.3, 432, 510, 512, 1182, 1198, 1198.5, 1194, 1194.2, 1197, 1198, 1198.5, 2100-2112, 2802.

194. The violations of these laws and regulations, as well as of fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of California Business and Professions Code §§ 17200 *et seq.*

195. As a result of these actions, Plaintiff, on information and belief, allege that Defendants are able to unfairly compete with other comparable companies in the

1 State of California in violation of California Business & Professions Code §§ 17000
2 *et. seq.* and §§ 17200 *et. seq.* Due to these unlawful, unfair, and/or fraudulent business
3 practices, Defendants have gained a competitive advantage over other comparable
4 companies doing business in the State of California.

5 196. The victims of these unlawful, unfair, and/or fraudulent business
6 practices include, but are not limited to, Plaintiff, putative class members, Defendants’
7 competitors in the State of California, and the general public. Plaintiff is informed
8 and believes, and thereon alleges, that Defendants performed the above-mentioned
9 acts with the intent of gaining an unfair competitive advantage and thereby injuring
10 Plaintiff, putative class members, Defendants’ competitors, and the general public.

11 197. Plaintiff’ success in this action will enforce important rights affecting the
12 public interest and public policy.

13 198. California Business and Professions Code §§ 17203 provides that a court
14 may make such orders or judgments as may be necessary to prevent the use or
15 employment by any person of any practice which constitutes unfair competition.
16 Injunctive relief is necessary and appropriate to prevent Defendants from repeating
17 their unlawful, unfair, and fraudulent business acts and business practices alleged
18 above.

19 199. California Business and Professions Code § 17203 provides that the
20 Court may restore to any person in interest, any money or property that may have
21 been acquired by means of such unfair competition. Plaintiff and the Class Members
22 are entitled to restitution pursuant to California Business and Professions Code §
23 17203 for wages and payments unlawfully withheld from employees, including the
24 fair value of the meal and rest periods and other losses alleged herein, during the four-
25 year period prior to the filing of this complaint. All remedies are cumulative pursuant
26 to California Business & Professions Code § 17205.

27 200. California Business and Professions Code § 17202 provides:
28 “Notwithstanding § 3369 of the Civil Code, specific or preventative relief may be

1 granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.”
2 Plaintiff and Class Members are entitled to enforce all applicable penalty provisions
3 of the California Labor Code pursuant to California Business and Professions Code §
4 17202.

5 201. Plaintiff requests injunctive relief pursuant to California Business &
6 Professions Code § 17203 to enjoin Defendants from continuing the unfair/unlawful
7 business practices alleged herein.

8 202. Plaintiff herein takes upon enforcement of these laws and lawful claims.
9 There is a financial burden involved in pursuing this action. The action is seeking to
10 vindicate a public right, and it would be against the interests of justice to penalize
11 Plaintiff by forcing Plaintiff to pay attorneys’ fees from the recovery in this action.
12 Attorneys’ fees are appropriate pursuant to California Code of Civil Procedure §
13 1021.5 and others.

14 **FOURTEENTH CAUSE OF ACTION**
15 **ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
16 **(Plaintiffs and Aggrieved Employees Against all Defendants)**

17 203. Plaintiffs hereby re-allege and incorporate by reference all paragraphs
18 above as though fully set forth herein.

19 204. Under California Labor Code section 2699.3(a), a plaintiff may bring a
20 cause of action under PAGA only after giving the LWDA and the employer notice
21 of the California Labor Code sections alleged to have been violated.

22 205. Plaintiffs gave written notice of the specified provisions alleged to have
23 been violated, including the facts and theories to support the alleged violations, as
24 required by California Labor Code section 2699.3. This written notice was provided
25 via certified mail to Defendants and to the LWDA by electronically filing the notice
26 via the Department of Industrial Relations’ website on October 6, 2024 ([LWDA-CM-](#)
27 [1054815-24](#)).

28 206. California Labor Code section 2699.3(a)(2)(C), “Notwithstanding any

1 other provision of law, a plaintiff may as a matter of right amend an existing complaint
2 to add a cause of action arising under this part at any time within 60 days of the time
3 periods specified in this part.”

4 207. Pursuant to California Labor Code section 2699(a), any provision of the
5 Labor Code that provides for a civil penalty to be assessed and collected by the
6 LWDA or any of its departments, divisions, commissions, boards, agencies or
7 employees for violation of the code may, as an alternative, be recovered through a
8 civil action brought by an Aggrieved Employees on behalf of themselves and other
9 current or former employees pursuant to the procedures specified in California Labor
10 Code section 2699.3.

11 208. For all provisions of the California Labor Code except those for which a
12 civil penalty is specifically provided, California Labor Code section 2699(f) imposes
13 upon Defendants a penalty of one hundred dollars (\$100.00) for each Aggrieved
14 Employees per pay period for the initial violation and two hundred dollars (\$200.00)
15 for each Aggrieved Employees per pay period for each subsequent pay period in
16 which Defendants violated these provisions of the California Labor Code.

17 209. Defendants’ conduct violates numerous California Labor Code sections,
18 including, but not limited to, the following:

- 19 a) Violations of California Labor Code §§ 2100 - 2112;
- 20 b) Failure to Pay All Earned Wages Including Minimum and
21 Overtime Wages §§ 204, 206, 226.2, 226.8, 227.3, 510, 1182.12,
22 1194, 1194.2, 1197;
- 23 c) Failure to Provide Meal Periods in Violation of California Labor
24 Code §§ 226.7, 512 and the applicable Wage Orders, § 11;
- 25 d) Failure to Provide Rest Periods in Violation of California Labor
26 Code §§ 226.7 and applicable Wage Orders § 12;
- 27 e) Failure to Provide Recovery Periods in Violation of California
28 Labor Code §§ 226.7;

- f) Failure to Provide Wage Statements and Payroll Records in Violation of California Labor Code §§ 226;
- g) Failure to Provide Wage Statements and Personnel Records in Violation of California Labor Code §§ 226, 1198.5;
- h) Failure to Provide Signed Records in Violation of California Labor Code § 432;
- i) Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code §§ 226, 226.3, and 1174;
- j) Failure to Reimburse for Necessary Business Expenditures; California Labor Code § 2802;
- k) Failure to pay Plaintiffs and Aggrieved Employees waiting time penalties upon separation of employment pursuant to California Labor Code §§ 201-204;
- l) Failure to provide accurate itemized wage statements to Plaintiffs and other Aggrieved Employees pursuant to California Labor Code §§ 226, 226.3;
- m) Failure to maintain adequate and legal temperature controls pursuant to section 15 of the Wage Orders and violation of recently enacted CalOSHA regulations;
- n) Failure to maintain accurate records regarding the employment of Plaintiffs and other Aggrieved Employees as herein alleged pursuant to California Labor Code §§ 1174 and 1174.5;
- o) Violations of California Labor Code sections 98.6, 98.7, 226, and 1198.5.

210. Further, California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as

1 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
2 for each pay period for which the employee was underpaid . . . (2) For each subsequent
3 violation, one hundred dollars (\$100) for each underpaid employee for each pay
4 period for which the employee was underpaid.”

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

15 212. As set forth above, Defendants have violated numerous provisions of
16 the California Labor Code regulating hours and days of work as well as the IWC
17 Wage Orders. Accordingly, Plaintiffs also seek the remedies set forth in California
18 Labor Code sections 558 and 1197.1 for themselves, the underpaid employees, and
19 the State of California.

20 213. Plaintiffs are “Aggrieved Employees” because he was employed by the
21 alleged violators and had one or more of the alleged violations committed against him,
22 and therefore is properly suited to represent the interests of all other Aggrieved
23 Employees.

24 214. Plaintiff has exhausted the procedural requirements under California
25 Labor Code section 2699.3 as to Defendants and are therefore able to pursue a claim
26 for penalties on behalf of themselves and all other Aggrieved Employees under
27 PAGA.

28

215. Pursuant to California Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the California Labor Code sections cited above and alleged throughout this Complaint.

216. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

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

- a. For certification of this action as a class action, including certifying the Class and Subclasses alleged by Plaintiff;
- b. For appointment of Plaintiff, as the class representatives;
- c. For appointment of Kevin Mahoney of **MAHONEY LAW GROUP, APC** and Jose Garay of **JOSE GARAY, APLC** and as class counsel for all purposes;
- d. For compensatory damages in an amount according to proof with interest thereon;
- e. For economic and/or special damages in an amount according to proof with interest thereon;
- f. For damages, monetary relief, wages, premiums, benefits, and penalties, including interest thereon;
- g. For waiting time penalties pursuant to California Labor Code § 203;
- h. For split-shift premiums, according to proof;
- i. For reporting time pay, according to proof;
- j. For liquidated damages pursuant to California Labor Code § 1194.2;
- k. For unreimbursed expenses pursuant to California Labor Code § 2802;
- l. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;

- 1 m. For restitution to Plaintiff and Class Members of all money and property
2 unlawfully acquired by Defendants through unfair or unlawful business
3 practices pursuant to California Business and Professions Code
4 §§ 17200 *et seq.*;
- 5 n. For an order requiring Defendants to restore and disgorge all funds to
6 each employee acquired by means of any act or practice declared by this
7 Court to be unlawful, unfair, or fraudulent and, therefore, constituting
8 unfair competition under California Business and Professions Code §§
9 17200, *et seq.*;
- 10 o. For prejudgment interest on all sums recovered pursuant to California
11 Labor Code § 218.6 and California Civil Code §§ 3287 and 3289;
- 12 p. For PAGA Penalties, civil penalties pursuant to California Labor Code
13 Section 2698, *et seq.*;
- 14 q. For recovery of attorneys' fees and costs provided by California Labor
15 Code §§ 226, 1194, and California Code of Civil Procedure § 1021.5;
- 16 r. For injunctive relief pursuant to California Labor Code §§ 2100 *et. seq.*;
17 and,
- 18 s. For such other relief as the Court deems just and proper.
- 19

20 Dated: January 13, 2025

JOSE GARAY, APLC

&

MAHONEY LAW GROUP, APC

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24 By: 

Jose Garay, Esq.
Kevin Mahoney, Esq.
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: January 13, 2025

JOSE GARAY, APLC

&

MAHONEY LAW GROUP, APC



By: _____

Jose Garay, Esq.

Kevin Mahoney, Esq.

Attorneys for Plaintiff