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10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF NAPA**

13 JOSE LUIS TAPIA, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 MICHAEL WOLF VINEYARD
SERVICES, INC.; and DOES 1 through
18 50, inclusive,

19 Defendants.

CASE NO.: 23CV000648

Assigned for All Purposes to:
Hon. Cynthia P. Smith, Dept. A

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

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

JURY TRIAL DEMANDED

1 Plaintiff JOSE LUIS TAPIA (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants MICHAEL WOLF VINEYARD SERVICES, INC.; and DOES
4 1 through 50, inclusive (collectively “Defendants”), and alleges as follows:

5 **INTRODUCTION**

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

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

17 3. This proposed class and PAGA action seeks, *inter alia*, unpaid wages (including
18 vacation pay, minimum, regular, overtime, and double time wages), compensation for non-
19 compliant meal periods and rest breaks, waiting time penalties, itemized wage statement penalties,
20 business expense reimbursements, liquidated damages, interest, statutory and civil penalties;
21 reasonable attorneys’ fees, and costs. Plaintiff’s class action is brought under, *inter alia*, the
22 California Industrial Welfare Commission (“IWC”) Wage Orders including Wage Order 14 and
23 applicable provisions of the California Code of Regulations, California Business & Professions
24 Code sections 17200 *et seq.*, California Civil Code section 3289, California Code of Civil
25 Procedure section 1021.5, and California Labor Code (“Labor Code”) sections 201-204, 206, 210,
26 218.6, 221, 223, 224, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
27 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802.

28 4. Under the California Unfair Competition Law, Business and Professions Code

1 sections 17200 *et seq.* (“UCL”), and pursuant to the class action procedures provided for in this
2 statute, Plaintiff, on behalf of himself and the proposed Class, seeks declaratory relief, injunctive
3 relief, and restitution of all benefits Defendants have received from their employees due to their
4 unlawful business practices, including but not limited to, their failure to timely provide minimum,
5 regular, overtime, and double time compensation due for all hours worked, failure to reimburse
6 business expenses, failure to provide compliant meal periods and rest breaks to their employees or
7 compensation in lieu thereof, and failure to provide accurate itemized wage statements.

8 **JURISDICTION AND VENUE**

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

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

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

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

5 **PARTIES**

6 8. Plaintiff is a California citizen that resides in Napa County, California. Defendants
7 employed Plaintiff as a non-exempt employee in a variety of positions from approximately 2003
8 until March 15, 2023. Plaintiff's job duties included, *inter alia*, cultivating crops, watering crops,
9 driving tractors, and maintaining tractors, among other things. Plaintiff worked at Defendants'
10 worksite located in Napa County, California.

11 9. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
12 MICHAEL WOLF VINEYARD SERVICES, INC. ("MWVS") was and is a California corporation
13 with its principal place of business in Napa, California. MWVS owns and operates vineyards in
14 California, including in Napa County. Plaintiff is further informed, believes and thereon alleges
15 that, at all relevant times, MWVS regularly conducted and conducts business within the State of
16 California and derives substantial revenues from services performed in California. In addition,
17 Plaintiff is informed, believes and thereon alleges that, at all relevant times, MWVS was and is an
18 employer subject to California state wage and hour laws.

19 10. Plaintiff is informed, believes and based thereon alleges that Defendants suffered
20 and permitted Plaintiff and the Class Members to work, and/or jointly exercised control over the
21 wages, hours, and/or working conditions of Plaintiff and the Class Members.

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

23 12. Plaintiff is unaware of the true names and capacities of those defendants identified
24 as DOES 1 through 50. Therefore, Plaintiff identifies those defendants fictitiously. Plaintiff is
25 informed, believes and thereon alleges that at all relevant times each DOE defendant was a parent,
26 sister, or related corporate entity of defendants, or an owner, employee or agent of defendants, and
27 each related entity, and was acting with the knowledge and authorization of each of the other
28 defendants. Plaintiff will seek to amend this Complaint to allege the true names and capacities of

1 each DOE defendant when their names have been ascertained and identified. Plaintiff is informed,
2 believes and thereon alleges that each of the defendants sued as DOES 1 through 50 participated
3 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
4 and omissions and some portion of the damages alleged herein.

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

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

17 15. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
18 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality
19 and separateness between the individual and the corporation does not exist, as Defendants, and
20 DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
21 herein were mere shells, instrumentalities and conduits through which DOES 1 through 50,
22 inclusive, carried out their business in the business name, exercising complete control and
23 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1
24 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES
25 1 through 50, inclusive, and were without the financial solvency and responsibility required by law;
26 and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50,
27 inclusive, or some other individual or entity which he or she owns or controls, with the intent to
28 hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,

1 Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship
2 between and among Defendants.

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

5 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

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

8 Class:

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

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

13 Waiting Time Sub-Class:

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

17 19. Plaintiff reserves the right pursuant to California Rules of Court, Rule 3.764 and
18 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide
19 greater specificity and/or further division into subclasses or limitation to particular issues based on
20 further investigation and discovery.

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

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

1 22. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
2 Defendants failed to pay Plaintiff and Class Members all minimum, regular, overtime, and double
3 time wages for all hours worked in violation of the Labor Code and IWC Wage Orders. During the
4 Class Period, Plaintiff and Class Members worked more than nine-and-a-half (9.5) hours per
5 workday, 12 hours per workday, and/or 55 hours per workweek. Plaintiff and Class Members also
6 worked over eight (8) hours on the seventh consecutive day of work. Defendants failed to pay
7 Plaintiff and other Class Members employees for all hours worked by failing to include all
8 remunerations such as commissions, bonuses, split shift premiums, and/or other incentive pay when
9 calculating Plaintiff's and Class Members employees' regular rate of pay for purposes of paying
10 overtime, double time, meal and rest premiums, vacation pay, and sick pay. Defendants further
11 failed to pay split shift premiums when Plaintiff and Class Members employees worked a full
12 workday (e.g., 10 hours), rested for approximately a few hours (e.g., 2 hours), and returned to work
13 another shift (e.g., 4-hour shift). Defendants failed to pay Plaintiff and other Class Members
14 employees for all hours worked by automatically deducting meal periods even when meal periods
15 were not taken by Plaintiff and the Class Members employees. Indeed, Defendants required
16 Plaintiff and other Class Members employees to work during their purported meal periods without
17 compensation. In addition, Defendants failed to pay Plaintiff and other Class Members employees
18 for time worked off-the-clock, e.g., Plaintiff answered work related calls while not clocked in for
19 work including on Sundays, his day off. Defendants also failed to pay double time when Plaintiff
20 and Class Members employees worked in excess of 12 hours per workday and/or over eight (8)
21 hours on the seventh consecutive day of work, and instead only paid the overtime rate of pay. As
22 such, Defendants failed to pay Plaintiff and other Class Members minimum, regular, overtime, and
23 double time wages for all hours worked, in violation of the Labor Code and applicable IWC Wage
24 Orders.

25 23. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
26 Defendants deprived Plaintiff and Class Members of the opportunity to take all of their statutorily
27 entitled meal periods within the appropriate time intervals or provide compensation in lieu thereof
28 in violation of the Labor Code and IWC Wage Orders. Specifically, Plaintiff and Class Members

1 employees regularly worked through their meal periods due to Defendants' understaffing and work
2 demands. As such, Plaintiff and Class Members employees regularly ate their meals while working
3 and/or while being restricted to Defendants' worksite. Due to Defendants' understaffing and work
4 demands, Plaintiff and Class Members employees also missed their meal periods or had them
5 interrupted (received work related calls during meal periods from co-workers), shortened
6 (especially when picking grapes), and/or late. In addition, Plaintiff and other Class Members
7 employees were required to answer their cell phones during their shifts, including during their meal
8 periods. Thus, Plaintiff and Class Members employees were denied off-duty meal periods.
9 Defendants also auto-deducted 30-minute meal periods even when Plaintiff and other Class
10 Members employees were not provided with meal periods, and rounded meal periods in violation
11 of California law. Defendants also failed to provide second meal periods when Plaintiff and Class
12 Members employees worked in excess of 10 hours per workday. Accordingly, Defendants failed to
13 provide Plaintiff and Class Members with timely, uninterrupted off-duty meal periods for at least
14 30 minutes when they worked more than five (5) hours and/or 10 hours in a workday, and failed to
15 compensate Plaintiff and Class Members with an additional hour of pay at their regular rate of pay
16 for every day in which they were denied a compliant meal period in violation of the Labor Code
17 and applicable IWC Wage Orders.

18 24. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
19 Defendants failed to permit Plaintiff and Class Members to take all of their statutorily entitled 10-
20 minute rest periods for every four (4) hours worked or major fraction thereof or provide
21 compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders. Specifically,
22 Defendants failed to provide rest breaks to Plaintiff and Class Members employees due to its
23 understaffing and work demands as mentioned above. As such, Plaintiff and Class Members
24 employees regularly missed their rest breaks, had them restricted to the worksite, shortened,
25 interrupted, and/or missed altogether. In addition, Plaintiff and other Class Members employees
26 were required to answer their cell phones during their shifts, including during their rest periods.
27 Thus, Plaintiff and Class Members employees were denied off-duty rest periods. Defendants also
28 failed to adopt and implement a practice of providing third rest breaks when Plaintiff and Class

1 Members employees worked over 10 hours. Notwithstanding these rest break violations and
2 Plaintiff's and Class Members' complaints, Defendants failed to compensate Plaintiff and other
3 Class Members with an additional hour of pay at their regular rate for every day in which they
4 suffered a rest period violation. Accordingly, Defendants violated the Labor Code and applicable
5 IWC Wage Orders.

6 25. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
7 Defendants failed to reimburse Plaintiff and Class Members for necessary business expenses
8 incurred in the performance of their duties in violation of the Labor Code and IWC Wage Orders.
9 For example, Plaintiff was required to communicate with Defendants' management and employees
10 using his personal cell phone without reimbursement. In addition, Plaintiff and Class Members
11 employees were required to purchase and maintain their own tools to perform their job duties
12 without reimbursement. Accordingly, Defendants violated the Labor Code and applicable IWC
13 Wage Orders.

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

20 27. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
21 Defendants failed to furnish Plaintiff and Class Members with accurate and complete wage
22 statements in violation of the Labor Code and IWC Wage Orders. Plaintiff and Class Members
23 received wage statements which did not accurately reflect the gross and net wages earned, total
24 hours worked, and all applicable rates of pay and the corresponding number of hours worked at
25 each pay rate, among other things in violation of the Labor Code and IWC Wage Orders.

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

28 ///

1 **NUMEROSITY**

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

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

10 **COMMONALITY**

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

14 (a) Whether Defendants failed to pay Plaintiff and Class Members all minimum,
15 regular, overtime, and double time wages for all hours worked by Plaintiff and Class Members;

16 (b) Whether Defendants paid Plaintiff and Class Members the proper rate of
17 pay;

18 (c) Whether Defendants paid split shift premiums;

19 (d) Whether Defendants failed to provide timely, uninterrupted, off-duty 30-
20 minute meal periods to Plaintiff and Class Members without compensation in lieu thereof;

21 (e) Whether Defendants failed to permit timely, uninterrupted, off-duty 10-
22 minute rest breaks for every four hours or major fraction thereof worked by Plaintiff and Class
23 Members without compensation in lieu thereof;

24 (f) Whether Defendants failed to timely pay Waiting Time SubClass Members
25 all wages due either immediately upon termination or within 72 hours after resignation;

26 (g) Whether Defendants' conduct was willful;

27 (h) Whether Defendants failed to issue accurate itemized wage statements to
28 Plaintiff and Class Members;

1 (i) Whether Defendants failed to reimburse Plaintiff and Class Members for
2 necessary business expenditures;

3 (j) Whether Defendants engaged in unfair business practices in violation of
4 California Business & Professions Code sections 17200 *et seq.*; and

5 (k) Additional common questions of law and fact that may develop as the
6 litigation progresses.

7 **TYPICALITY**

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

14 **ADEQUACY OF REPRESENTATION**

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

21 **PREDOMINANCE**

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

26 **SUPERIORITY OF CLASS ACTION**

27 35. A class action is superior to other available methods for the fair and efficient
28 adjudication of this controversy because individual litigation of the claims of all Class Members is

1 impracticable. Even if every Class Member could afford individual litigation, the court system
2 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
3 cases would proceed. Individualized litigation would also present the potential for varying,
4 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
5 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
6 individual actions by Class Members may establish inconsistent standards of conduct for
7 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
8 the issues presented herein, presents fewer management difficulties, conserves the resources of the
9 parties and the court system, and protects the rights of each Class Member.

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

13 **PUBLIC POLICY CONSIDERATIONS**

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

20 **FIRST CAUSE OF ACTION**

21 **(FAILURE TO PAY ALL WAGES)**

22 **(Against All Defendants)**

23 38. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
24 though fully set forth herein.

25 39. At all relevant times, Defendants had a duty to comply with Labor Code sections
26 204, 206, 210, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC Wage
27 Orders and California Code of Regulations.

28 40. Labor Code section 204 and the IWC Wage Orders require timely payment of all

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

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

7 42. Labor Code section 210 provides:

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

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

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

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

1 for each underpaid employee for each pay period for which the employee was underpaid in addition
2 to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section
3 shall be paid to the affected employee.”

4 46. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid
5 to all employees in California for all hours worked. Local minimum wage ordinances, may provide
6 for higher minimum wage rates that must be paid to employees for all hours worked in those locales
7 where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay
8 less than the state or local minimum wage, whichever is higher, for any hour of work.

9 47. Labor Code section 1194 provides that any employee receiving less than the legal
10 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
11 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
12 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

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

15 49. Labor Code section 1198 prohibits employers from employing for longer hours or
16 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
17 set by the Labor Commissioner.

18 50. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
19 Plaintiff and Class Members regularly worked over more than nine-and-a-half (9.5) hours per
20 workday, 12 hours per workday, and/or 55 hours per workweek. Plaintiff and Class Members also
21 worked over eight (8) hours on the seventh consecutive day of work.

22 51. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
23 Defendants failed to pay Plaintiff and Class Members all wages owed, split shift premiums, and the
24 proper rate of pay by failing to include all remuneration when calculating vacation pay, sick pay,
25 meal and rest period premiums, overtime and/or double time wages. Defendants also auto-deducted
26 30 minute meal periods, and required Plaintiff and Class Members to work off-the-clock without
27 compensation, among other things.

28 52. Plaintiff is informed, believes, and thereon alleges that Defendants, through their

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

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

15 54. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
16 as described herein and below.

17 **SECOND CAUSE OF ACTION**

18 **(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU**

19 **THEREOF)**

20 **(Against All Defendants)**

21 55. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
22 though fully set forth herein.

23 56. At all relevant times, Defendants had a duty to comply with Labor Code sections
24 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

25 57. Labor Code section 512 and Section 11 of the IWC Wage Orders prohibit an
26 employer from employing any person for a work period of more than 5 hours per day without
27 providing the employee with a meal period of not less than 30 minutes (commencing before the
28 employee’s fifth hour of work), except that if the total work period per day is no more than 6 hours,

1 the meal period may be waived by mutual consent of the employer and employee. A second meal
2 period of not less than 30 minutes is required if an employee works more than 10 hours per day and
3 must begin before the employee's tenth hour of work, except if the total hours worked is no more
4 than 12 hours, the second meal period may be waived by mutual consent of the employer and
5 employee, but only if the first meal period was not waived.

6 58. Section 11 of the applicable IWC Wage Orders state that "[u]nless the employee is
7 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
8 duty' meal period and counted as time worked."

9 59. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
10 requiring any employee to work during a meal period mandated by any California statute,
11 regulation, standard or order. If an employer fails to provide an employee with a meal period in
12 accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the
13 employer pay the employee one additional hour of pay at the employee's regular rate of
14 compensation for each workday that the meal period is noncompliant.

15 60. Throughout the Class Period, Plaintiff and Class Members did not receive compliant
16 meal periods when working more than five (5) hours and/or 10 hours per workday because their
17 first and second meal periods were auto-deducted, rounded, missed, late, interrupted, short,
18 restricted to the worksite, and/or not free of all duties.

19 61. During the Class Period, Defendants failed to pay Plaintiff and Class Members meal
20 period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the
21 applicable IWC Wage Order and California Code of Regulations.

22 62. Plaintiff is informed, believes, and thereon alleges that Class Members did not
23 voluntarily waive their meal periods.

24 63. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
25 conduct described herein, have committed an "intentional theft of wages in an amount greater than
26 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
27 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
28 period" within the meaning of California Penal Code section 487m. Specifically, Defendants have

1 intentionally deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200,
2 gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful
3 means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to
4 Plaintiff and Class Members under the law. Plaintiff and the Class Members he seeks to represent
5 are thus entitled to recover from Defendants treble damages and costs, including reasonable
6 attorneys' fees, pursuant to California Penal Code section 496(c).

7 64. As a direct and proximate result of Defendants' unlawful conduct, as set forth
8 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
9 of premium pay for meal period violations and earnings, in an amount to be established at trial, plus
10 prejudgment interest pursuant to statute. To the extent such unpaid premiums or meal period
11 violations are deemed unpaid wages, Plaintiff will also seek attorneys' fees and costs pursuant to
12 statute.

13 65. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
14 as described herein and below.

15 **THIRD CAUSE OF ACTION**

16 **(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU**

17 **THEREOF)**

18 **(Against All Defendants)**

19 66. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
20 though fully set forth herein.

21 67. At all relevant times, Defendants had a duty to comply with Labor Code section
22 226.7 and the applicable IWC Wage Orders and California Code of Regulations.

23 68. Labor Code section 226.7(a) states "No employer shall require any employee to
24 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
25 Commission."

26 69. Section 12 of the applicable IWC Wage Order provides in relevant part that:

27 (A) Every employer shall authorize and permit all employees to
28 take rest periods, which insofar as practicable shall be in the middle

1 of each work period. The authorized rest period time shall be based
2 on the total hours worked daily at the rate of ten (10) minutes net rest
3 time per four (4) hours or major fraction thereof. However, a rest
4 period need not be authorized for employees whose total daily work
time is less than three and one-half (3 1/2) hours. Authorized rest
period time shall be counted as hours worked for which there shall be
no deduction from wages.

5 (B) If an employer fails to provide an employee a rest period in
6 accordance with the applicable provisions of this order, the employer
7 shall pay the employee one (1) hour of pay at the employee's regular
rate of compensation for each work day that the rest period is not
provided.

8 70. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
9 Plaintiff and Class Members worked in excess of three-and-a-half (3.5) hours, six (6) hours, and/or
10 10 hours per workday.

11 71. During the Class Period, Plaintiff and Class Members did not receive compliant 10-
12 minute rest periods for every four hours worked or major fraction thereof because rest breaks were
13 missed, interrupted, shortened, restricted to the worksite, and/or not free of all duties.

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

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

28 74. As a direct and proximate result of Defendants' unlawful conduct, as set forth

1 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
2 of earnings, in an amount to be established at trial plus prejudgment interest pursuant to statute. To
3 the extent such unpaid premiums or rest period violations are deemed unpaid wages, Plaintiff will
4 also seek attorneys' fees and costs pursuant to statute.

5 75. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
6 as described herein and below.

7 **FOURTH CAUSE OF ACTION**

8 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

9 **(Against All Defendants)**

10 76. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
11 though fully set forth herein.

12 77. At all relevant times, Defendants had a duty to comply with Labor Code section 226
13 and the applicable IWC Wage Orders and California Code of Regulations.

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

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

27 80. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
28 showing, among other things, when the employee begins and ends each work period, meal periods

1 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
2 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff
3 and Class Members. Plaintiff is informed, believes, and thereon alleges that Defendants have
4 knowingly and intentionally failed to comply with the IWC Wage Orders.

5 81. Throughout the Class Period, Defendants provided wage statements that did not
6 accurately reflect the total number of hours worked by Plaintiff and Class Members at each
7 corresponding pay rate, and the gross and net wages earned, among other things, making it difficult
8 for Plaintiff and Class Members to determine whether they were paid correctly for all hours worked,
9 which deductions were made, and the extent of any underpayment. Plaintiff has had to file this
10 lawsuit in order to determine the extent of the underpayment of wages, thereby causing Plaintiff to
11 incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
12 costs had Defendants provided the accurate wages earned. This has also delayed Plaintiff's ability
13 to demand and recover the underpayment of wages from Defendants. Defendants' violations of
14 Labor Code section 226(a) prevented Plaintiff and Class Members from knowing, understanding
15 and disputing the wages paid to them, and resulted in an unjustified economic enrichment to
16 Defendants.

17 82. Defendants knowingly and intentionally failed to provide accurate, itemized wage
18 statements to Plaintiff and Class Members, and as such Plaintiff and Class Members are deemed to
19 have suffered injury in accordance with Labor Code section 226. Plaintiff and the Class are
20 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

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

24 84. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
25 as described herein and below.

26 ///

27 ///

28 ///

FIFTH CAUSE OF ACTION
(WAITING TIME PENALTIES)
(Against All Defendants)

85. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

86. At all relevant times, Defendants had a duty to comply with Labor Code sections 201, 202, and 203, 227.3, and the applicable IWC Wage Orders and California Code of Regulations. Defendants failed to comply with these final paycheck requirements with respect to Waiting Time SubClass Members.

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

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

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

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

91. Plaintiff is informed, believes, and thereon alleges, that at all relevant times, Defendants willfully failed to timely pay Waiting Time SubClass Members all of their unpaid wages earned, including, but not limited to, vacation pay, minimum, regular, overtime, and double time wages, compensation for non-compliant meal periods and rest periods, and unpaid reimbursements upon separation of employment. Waiting Time SubClass Members are entitled to timely compensation upon separation of their employment for any outstanding vacation pay, unpaid

1 wages, reimbursements, and premiums but to date have not received such compensation from
2 Defendants, therefore entitling them to penalties pursuant to Labor Code section 203.

3 92. As a consequence of Defendants' willful conduct in failing to pay all earned wages,
4 Waiting Time SubClass Members are entitled to up to 30 days' wages as a penalty for Defendants'
5 failure to timely pay wages upon separation of employment, in addition to prejudgment interest,
6 attorneys' fees, and costs in amounts that will be established at trial.

7 93. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
8 as described herein and below.

9 **SIXTH CAUSE OF ACTION**

10 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**

11 **(Against All Defendants)**

12 94. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
13 though fully set forth herein.

14 95. At all relevant times, Defendants had a duty to comply with Labor Code
15 sections 2800 and 2802 and the applicable IWC Wage Orders and California Code of Regulations.

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

21 97. Labor Code section 2802(a) requires that employers indemnify and reimburse
22 employees for all business expenses, which are defined as all necessary expenditures or losses
23 incurred by the employee in direct consequence of the discharge of the employee's duties or
24 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code
25 section 2802(b) authorizes employees to recover in a court action interest which shall accrue from
26 the date on which the employee incurred the necessary expenditure or loss. Labor Code
27 section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
28 Code section 2802, to also recover attorneys' fees and costs.

1 98. During the Class Period, Plaintiff and Class Members used their personal cell
2 phones and tools without reimbursement.

3 99. Defendants have unfairly and unlawfully violated Labor Code sections 2800 and
4 2802, and the applicable IWC Wage Orders by failing to reimburse Plaintiff and Class Members
5 for all of their out-of-pocket business expenses incurred in the discharge of their job duties.

6 100. As a consequence of Defendants' willful conduct, Plaintiff and Class Members have
7 sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be
8 established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

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

11 **SEVENTH CAUSE OF ACTION**
12 **(UNFAIR BUSINESS PRACTICES)**
13 **(Against All Defendants)**

14 102. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
15 though fully set forth herein.

16 103. California Business & Professions Code Section 17200, *et seq.* prohibits unfair
17 competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

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

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

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

27 107. Plaintiff brings this action on behalf of himself and all members of the general
28 public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below

1 constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of
2 the UCL. Defendants' policies and practices have violated state law in at least the following
3 respects:

4 (a) Failing to pay all vacation pay, minimum, regular, overtime, and double time
5 wages due to Plaintiff and Class Members in violation of Labor Code sections 204, 206, 210, 510,
6 558, 227.3, 246, 1182.12, 1194, 1194.2, 1197, and 1198;

7 (b) Failing to provide compliant meal periods or compensation in lieu thereof in
8 violation of Labor Code sections 226.7 and 512;

9 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
10 thereof in violation of Labor Code section 226.7;

11 (d) Intentionally failing to provide Plaintiff and Class Members with accurate
12 itemized wage statements in violation of Labor Code section 226;

13 (e) Failing to timely pay all earned wages to Waiting Time SubClass Members
14 upon separation of employment in violation of Labor Code sections 201, 202, 203, and 227.3;

15 (f) Failing to reimburse Plaintiff and Class Members all necessary business
16 expenses in violation of Labor Code sections 2800 and 2802; and

17 (g) Violations of the IWC Wage Orders for the same conduct above.

18 108. Defendants' course of conduct, acts, and practices in violation of California law
19 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
20 conduct described herein violates the policy or spirit of such laws or otherwise significantly
21 threatens or harms competition. The substantial harm to Plaintiff and Class Members in being
22 wrongfully denied earned wages, meal and rest periods, premium pay, and reimbursements
23 outweighs the utility, if any, of Defendants' policies or practices and, therefore, Defendants' actions
24 described herein constitute an unfair business practices or acts within the meaning of the UCL.

25 109. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
26 statutory and injunctive relief to stop the misconduct of Defendants, as complained herein, and to
27 compel restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and
28 premiums, etc.) obtained by Defendants through the unfair and unlawful business practices

1 described herein pursuant to, *inter alia*, Business and Professions Code sections 17202, 17203, and
2 17208. Under the circumstances alleged, it would be inequitable and result in a miscarriage of
3 justice for Defendants to continue to retain the property of Plaintiff and Class Members.

4 110. Defendants' failure to adopt and implement policies in accordance with and/or
5 adhere to these laws, all of which are binding upon and burdensome to Defendants' competitors,
6 engenders an unfair competitive advantage for Defendants against its competitors, thereby
7 constituting an unfair business practice, as set forth in the UCL.

8 111. Pursuant to California Business and Professions Code section 17203, as a direct and
9 proximate result of the unfair business practices of Defendants, Plaintiff, individually, and on behalf
10 of all employees similarly situated, is entitled to equitable and injunctive relief, against such
11 unlawful practices in order to prevent future damage, for which there is no adequate remedy at law,
12 and to avoid a multiplicity of lawsuits. Plaintiff also seeks an order enjoining Defendants to cease
13 and desist from engaging in the practices described herein.

14 112. Plaintiff and Class Members also request any other such legal and equitable relief
15 from Defendants' unlawful and willful conduct as the Court deems just and proper, including an
16 injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent
17 practices alleged in this Complaint.

18 113. As a result of Defendants' unlawful and unfair business practices, Plaintiff and Class
19 Members are entitled to and seek other appropriate relief available under California Business &
20 Professions Code sections 17200 *et seq.* Plaintiff, on behalf of himself and the Class, also seeks
21 recovery of attorneys' fees and costs of this action to be paid by Defendants as provided by
22 California Code of Civil Procedure section 1021.5.

23 114. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
24 as described herein and below.

25 **EIGHTH CAUSE OF ACTION**

26 **(VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

27 **(Against All Defendants)**

28 115. Plaintiff incorporates by reference all previous paragraphs of this Complaint as

1 though fully set forth herein.

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

6 117. On May 19, 2023, Plaintiff gave written notice of the specific Labor Code provisions
7 alleged to have been violated, including the facts and theories to support the alleged violations, as
8 required by Labor Code section 2699.3. This written notice was provided via certified mail to
9 Defendants and to the LWDA by electronically filing the notice via the Department of Industrial
10 Relations' website. More than 65 days have passed since Plaintiff submitted his PAGA notice to
11 the LWDA without notice from the LWDA. Accordingly, Plaintiff may amend his Complaint to
12 add a PAGA cause of action.

13 118. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
14 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
15 divisions, commissions, boards, agencies or employees for violation of the code may, as an
16 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
17 herself and other current or former employees pursuant to the procedures specified in Labor Code
18 section 2699.3.

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

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

26 (a) Violation of Labor Code sections 201-204, 206, 210, 221, 223, 224, 227.3,
27 246, 510, 558, 1194, 1197, 1197.1, 1198, and 1199 for failure to timely pay all earned wages
28 (including sick pay, vacation pay, minimum, regular, and overtime wages) owed to Plaintiff and

1 other aggrieved employees during employment and upon separation of employment as herein
2 alleged;

3 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal
4 periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed
5 meal periods as herein alleged;

6 (c) Violation of Labor Code sections 226.7 for failure to permit rest breaks to
7 Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods
8 as herein alleged;

9 (d) Violation of Labor Code sections 226 and 226.3 for failure to provide
10 accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

11 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain
12 accurate records regarding the employment of Plaintiff and other aggrieved employees as herein
13 alleged; and

14 (f) Violation of Labor Code section 2800 and 2802 for failure to reimburse
15 Plaintiff and other aggrieved employees for business expenses.

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

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

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

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

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

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

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

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

26 129. For bringing this action, Plaintiff is entitled to attorney's fees and costs pursuant to
27 statute.

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Class, prays for judgment and the following specific relief against Defendants, jointly and severally, as follows:

1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses as appropriate under California Code of Civil Procedure section 382;
2. That Plaintiff be appointed as the Class Representative;
3. That Jose Garay, APLC and the Law Office of Daniel J. Hyun be appointed as Class Counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For such general, economic, and/or special damages in an amount according to proof with interest thereon;
6. For damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;
7. For waiting time penalties pursuant to Labor Code section 203;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For the amounts provided for in Labor Code section 226.7;
10. For attorney's fees, costs of suit, including expert fees, and interest pursuant to Labor Code sections 218.6, 226, 1194, 2698 *et seq.*, 2699(g), 2802 and California Code of Civil Procedure section 1021.5;
11. For restitution to Plaintiff and Class Members of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code sections 17200 *et seq.*;
12. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code sections 17200, *et seq.*;
13. For liquidated damages pursuant to Labor Code section 1194.2;

14. For permanent injunctive relief described in the UCL cause of action;
15. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6, California Civil Code sections 3287 and 3289, and applicable law;
16. For post judgment interest on all amounts awarded to Plaintiff and Class Members as provided by law;
17. A declaratory judgment that the practices complained of herein are unlawful under California law;
18. Such other equitable relief as the Court may deem proper;
19. For civil penalties pursuant to PAGA; and
20. An award of such other and further relief as this Court may deem appropriate.

Dated: July 24, 2023

JOSE GARAY, APLC/
LAW OFFICE OF DANIEL J. HYUN

By: 

Jose R. Garay
Daniel J. Hyun

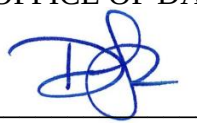
Attorneys for Plaintiff JOSE LUIS TAPIA

DEMAND FOR JURY TRIAL

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

Dated: July 24, 2023

JOSE GARAY, APLC/
LAW OFFICE OF DANIEL J. HYUN

By: 

Jose R. Garay
Daniel J. Hyun

Attorneys for Plaintiff JOSE LUIS TAPIA