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13 *Attorneys for Plaintiff and the Class,*
14 *the State of California and Aggrieved Employees*

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF SOLANO**

17 SILVERIO ROSALES, on behalf of himself
18 and all others similarly situated, the State of
19 California, and Aggrieved Employees,

20 *Plaintiff,*

21 v.

22 MAIN ELECTRIC SUPPLY COMPANY
23 LLC; EXPRESS SERVICES, INC. d/b/a
24 EXPRESS EMPLOYMENT
25 PROFESSIONALS; and DOES 1 through
26 100, inclusive,

27 *Defendants.*

ENDORSED FILED
Clerk of the Superior Court

JUL 27 2023

By J. Abueg
DEPUTY CLERK

Case No.: CU23-02346

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATIONS OF:**

- (1) Failure to Timely Pay All Wages Owed (Cal. Lab. Code § 204)
- (2) Failure to Authorize and Permit and/or Make Available Meal Periods (Cal. Lab. Code §§ 226.7 and 512);
- (3) Failure to Authorize and Permit and/or Make Available Rest Periods (Cal. Lab. Code § 226.7);
- (4) Failure to Provide Timely and Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
- (5) Waiting Time Penalties (Cal. Lab. Code §§ 201-203);
- (6) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
- (7) Failure to Provide Employee Records (Cal. Lab. Code §§ 1198.5, 432, and 226)
- (8) – (12) Penalties Pursuant to Sections 2699(a) and (f) of the California Labor Code Private Attorneys General Act

JURY TRIAL DEMANDED

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Rosales v. Main Electric Supply Company LLC, et al.

INTRODUCTION

1. Plaintiff Silverio Rosales (“Plaintiff”), individually and on behalf of the State of California, the Aggrieved Employees, and all others similarly situated, brings this class and Private Attorneys General Act (“PAGA”) action against Main Electric Supply Company LLC and Express Services, Inc. d/b/a Express Employment Professionals (collectively “Defendants”).

2. Throughout the relevant time period, Plaintiff, putative Class Members, and Aggrieved Employees have been denied legally compliant meal and rest breaks. Additionally, and as a result of the failure to provide legally compliant meal and rest breaks, Defendants also fail to timely pay for all hours worked during employment and at separation of employment.

3. Plaintiff brings this action to challenge Defendants’ policies and practices of: (1) failing to authorize and permit Plaintiff, Class Members, and Aggrieved Employees to take compliant meal and rest periods to which they are entitled by law, and failing to pay premiums for those missed meal and rest periods; (2) failing to timely compensate Plaintiff, Class Members, and Aggrieved Employees for all wages during employment; (3) failing to provide accurate, itemized wage statements; and (4) failing to timely pay all wages due upon separation from employment.

4. Defendants are also liable for violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).

5. Plaintiff also brings an individual claim requesting penalties for Defendants’ failure to timely produce personnel and payroll records after sending Defendants a written request for same, pursuant to the Cal. Lab. Code.

6. Plaintiff files this action to recover all unpaid compensation, penalties, interest, and other damages to the full extent permitted by the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, on behalf of himself and Class members as a class action under Cal. Code Civ. Proc. § 382. Plaintiff also files this action under PAGA, Cal. Lab. Code § 2699, to recover civil penalties on behalf of the State of California and Aggrieved Employees. Plaintiff also seeks declaratory and equitable relief.

7. Finally, Plaintiff seeks reasonable attorneys’ fees and costs under the Cal. Lab. Code and Cal. Code Civ. Proc. § 1021.5.

1 **SUBJECT MATTER JURISDICTION AND VENUE**

2 8. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or
3 395.5. Defendants conducted business and employed Class Members and Aggrieved Employees in
4 this County, and therefore the liability and the cause or some part of the cause arose in this County.

5 9. This Court has jurisdiction over Plaintiff's claims pursuant to the Cal. Lab. Code and
6 Cal. Bus. & Prof. Code. The Court has jurisdiction over Defendants because they do business in the
7 state and are registered with the California Secretary of State.

8 **PARTIES**

9 10. Plaintiff Silverio Rosales is an individual over the age of eighteen, and at all times
10 mentioned in this Complaint was a resident of the State of California.

11 11. Plaintiff was employed by Defendants as a quality control warehouse worker from
12 approximately November 2022 to approximately March 2023, in Fairfield, California.

13 12. Plaintiff is informed, believes, and thereon alleges that Main Electric Supply
14 Company LLC is a California limited liability company with its principal place of business in
15 California. Main Electric Supply Company LLC is registered to do business in California.

16 13. Plaintiff is informed, believes, and thereon alleges that Express Services, Inc. d/b/a
17 Express Employment Professionals (hereinafter "Express Services, Inc.") is a Colorado corporation
18 with its principal place of business in Oklahoma City, Oklahoma. Express Services, Inc. is registered
19 to do business in California.

20 14. The true names and capacities, whether individual, corporate, associate, or otherwise,
21 of DOES 1-100, inclusive, are unknown to Plaintiff, who therefore sues the DOE Defendants by
22 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously
23 named Defendants is responsible in some manner for the occurrences and violations as herein
24 alleged. Plaintiff will amend this Complaint to show their true names and capacities when they have
25 been ascertained.

26 15. Plaintiff is informed, believes, and thereon alleges that Defendants jointly exercise
27 control over Plaintiff, putative Class Members, and Aggrieved Employees with respect to their
28 employment.

16. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, Defendants, acting through their agents and/or employees, and/or under the direction and control of each of the other, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

17. Plaintiff is informed, believes, and thereon alleges that Defendants directly control the operations of their agents, managers, and employees throughout all of their locations in California.

18. As employers of Plaintiff, Class members, and Aggrieved Employees throughout the relevant time periods, Defendants, each of them, are solely, jointly, and severally liable for damages and penalties for violating the Labor Code with respect to the employment of Plaintiff, Class members, and Aggrieved Employees.

19. Defendants employ Plaintiff, putative Class Members, and Aggrieved Employees because Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff, putative Class Members, and Aggrieved Employees.

20. At all relevant times, Defendants have done business under the laws of the State of California, have operated places of business in California, including in this judicial district, and have employed Plaintiff, Class Members, and Aggrieved Employees in this judicial district and elsewhere throughout California. Defendants are a “person” as defined in Cal. Lab. Code § 18. Defendants are also an “employer” as that term is used in the Cal. Lab. Code and the IWC Wage Orders regulating wages, hours, and working conditions.

FACTUAL ALLEGATIONS

21. Defendant Main Electric Supply Company LLC is an electrical material provider. It provides electrical supplies and equipment to commercial, residential, government, and industrial industries across the United States, including in California, and provides a wide variety of labor-saving service solutions.

22. Defendant Express Services, Inc. provides staffing in the United States, including in

1 California, and abroad, and employs hundreds of thousands of people.

2 23. Upon information and belief, Defendant Express Services, Inc. provides staffing
3 services for Defendant Main Electric Supply Company LLC.

4 24. Defendants operate throughout California and employ hundreds of hourly, non-
5 exempt workers in California.

6 25. Plaintiff was employed by Defendants as a warehouse worker performing quality
7 control in Fairfield, California from approximately November 2022 to approximately March 2023.
8 Plaintiff's primary duties included, but were not limited to, ensuring customers' orders were
9 complete and included all items, loading trucks, and performing quality control.

10 26. Plaintiff was classified as an hourly, non-exempt employee and was paid an hourly
11 rate of approximately \$20 per hour.

12 27. Although Plaintiff's shifts varied in length, Plaintiff was usually scheduled to work
13 at least 8 hours per shift, but usually worked 10-13 hours per shift, and usually worked 5 shifts per
14 week.

15 28. Plaintiff is informed, believes, and thereon alleges that Class Members and Aggrieved
16 Employees were and are employed by Defendants throughout California, including in this district,
17 and perform work materially similar to Plaintiff. Defendants pay Class Members and Aggrieved
18 Employees, including Plaintiff, on an hourly rate basis.

19 29. Class Members and Aggrieved Employees are required to follow and abide by
20 common work, time, and pay policies and procedures in the performance of their job duties.

21 30. At the end of each pay period, Class Members and Aggrieved Employees receive
22 wages from Defendants that are determined by common systems and methods that Defendants
23 select and control.

24 31. As a matter of policy and/or practice, Defendants regularly fail to authorize and
25 permit Plaintiff, Class Members, and Aggrieved Employees to take legally compliant meal periods.
26 Plaintiff, Class Members, and Aggrieved Employees are notified by their supervisors and/or
27 managers when they may take their breaks during their shifts, but these supervisors and/or managers
28 fail to provide time to take third rest breaks and second meal periods.

1 32. Therefore, despite Plaintiff, Class Members, and Aggrieved Employees often
2 working more than 10 hours in a shift, they are not provided with a compliant second meal break.

3 33. Further, despite often working more than 10 hours in a shift, Plaintiff, Class
4 Members, and Aggrieved Employees are also routinely denied their third rest periods to which they
5 are entitled.

6 34. Despite these violations, Defendants fail to pay the required premium pay for all
7 noncompliant meal and rest periods.

8 35. Plaintiff is informed, believes, and thereon alleges that Defendants utilizes and
9 applies these same meal and rest period policies and practices across all Defendants' facilities
10 throughout California.

11 36. As a result of the aforementioned violations, Plaintiff, Class Members, and Aggrieved
12 Employees are provided with inaccurate wage statements as such statements do not include
13 premium pay for missed meal and rest periods.

14 37. Additionally, Plaintiff, Class Members, and Aggrieved Employees did not receive all
15 wages during employment and following separation from employment, including premium
16 payments for noncompliant meal periods and rest periods.

17 38. Class Members and Aggrieved Employees are employed by Defendants and perform
18 work materially similar to Plaintiff.

19 39. Class Members and Aggrieved Employees report to facilities owned, operated, or
20 managed by Defendants to perform their jobs.

21 40. Class Members and Aggrieved Employees perform their jobs under Defendants'
22 supervision using materials and technology approved and supplied by Defendants.

23 41. Class Members and Aggrieved Employees are required to follow and abide by
24 Defendants' common work, time, and pay policies and procedures in the performance of their jobs.

25 42. At the end of each pay period, Class Members and Aggrieved Employees receive
26 wages from Defendants that are determined by common systems and methods that Defendants
27 select and control.

28 43. Defendants pay Class Members and Aggrieved Employees on an hourly rate basis.

1 44. Defendants' method of paying Plaintiff, Class Members, and Aggrieved Employees
2 is willful and not based on a good faith and reasonable belief that their conduct complied with
3 California law.

4 45. Defendants' unlawful conduct has been widespread, repeated, and consistent
5 throughout Defendants' California facilities.

6 46. Defendants know or should know that their policies and practices are unlawful and
7 unfair.

8 47. Defendants' conduct is willful, carried out in bad faith, and causes significant
9 damages to non-exempt hourly employees in an amount to be determined at trial.

10 48. On May 5, 2023, pursuant to Cal. Lab. Code §§ 1198.5, 432, and 226, Plaintiff sent
11 Defendants Main Electric Supply Company LLC a written request for his personnel records, payroll
12 records, and copies of any documents signed by Plaintiff relating to the obtaining or holding of
13 employment, via certified mail. On May 15, Defendant Main Electric Supply Company LLC sent
14 an email to Plaintiff's counsel indicating that Plaintiff was not its employee. As a result, Defendant
15 Main Electric Supply Company LLC did not produce any records within the applicable 30-day and
16 21-day time limits, nor did it request an extension of time.

17 49. On May 5, 2023, pursuant to Cal. Lab. Code §§ 1198.5, 432, and 226, Plaintiff sent
18 Defendants Express Services, Inc. a written request for his personnel records, payroll records, and
19 copies of any documents signed by Plaintiff relating to the obtaining or holding of employment, via
20 certified mail. Defendants' human resources department received the written request on May 10,
21 2023, per the return receipt received by Plaintiff's counsel. Defendant Express Services, Inc. did
22 not produce any records within the applicable 30-day and 21-day time limits, nor did it request an
23 extension of time.

24 **C.C.P. § 382 CLASS ACTION ALLEGATIONS**

25 50. Plaintiff brings this case as a class action on behalf of himself and all others similarly
26 situated pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Class that Plaintiff seeks to represent is
27 defined as follows:
28

1 **All current and former hourly, non-exempt workers of Defendants Main Electric**
2 **Supply Company LLC and/or Express Services, Inc. d/b/a Express Employment**
3 **Professionals in California any time starting four years prior to the filing of this**
4 **Complaint until resolution of this action (“Class”).**

5 51. This action has been brought and may properly be maintained as a class action
6 because there is a well-defined community of interest in the litigation and the proposed class is
7 easily ascertainable.

8 52. **Numerosity**: The potential members of the class are so numerous that joinder of all
9 the members of the Class is impracticable. Plaintiff is informed and believes that the number of
10 Class Members exceeds 100. This volume makes bringing the claims of each individual member of
11 the class before this Court impracticable. Likewise, joining each individual member of the Class as
12 a plaintiff in this action is impracticable. Furthermore, the identities of the Class will be determined
13 from Defendants’ records, as will the compensation paid to each of them. As such, a class action is
14 a reasonable and practical means of resolving these claims. To require individual actions would
15 prejudice the Class and Defendants.

16 53. **Commonality**: There are questions of law and fact common to Plaintiff and the Class
17 that predominate over any questions affecting only individual members of the Class. These common
18 questions of law and fact include, but are not limited to:

- 19 i. Whether Defendants fail to timely compensate Class Members for all hours
20 worked;
- 21 ii. Whether Defendants have a policy and or practice of failing to authorize and
22 permit, make available, and/or provide Class Members with compliant meal
23 and rest periods to which they are entitled in violation of the Cal. Lab. Code
24 and Wage Orders;
- 25 iii. Whether Defendants have a policy and/or practice of failing to provide Class
26 Members with timely, accurate itemized wage statements in violation of the
27 Cal. Lab. Code and Wage Orders;
- 28 iv. Whether Defendants fail to timely pay Class Members for all wages owed
 upon separation from employment.
- v. Whether Defendants violated Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by

any of the above conduct: and

vi. The proper formula for calculating restitution, damages, and penalties owed to Plaintiff and the Class as alleged herein.

54. **Typicality**: Plaintiff's claims are typical of the claims of the Class. Defendants' common course of conduct in violation of law as alleged herein caused Plaintiff and Class Members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

55. **Adequacy of Representation**: Plaintiff seeks relief for state law violations perpetrated by Defendants. In that sense, Plaintiff does not have any conflicts of interest with other Class Members and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent and experienced in litigating complex cases and large class actions, including wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the Class Members.

56. **Superiority of Class Action**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each proposed Class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

57. In the alternative, the Class may be certified because the prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants.

58. If each individual Class member were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each member of the Class with Defendants' vastly superior financial legal resources.

59. Requiring each individual Class member to pursue an individual remedy would also discourage the assertion of lawful claims by the Class Members who would be disinclined to pursue these claims against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers, and well-being.

FIRST CAUSE OF ACTION

Failure to Pay for All Wages

Pursuant to Cal. Lab. Code § 204

(On Behalf of the Class)

60. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

61. Cal. Lab. Code § 204 provides in part that “all wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

62. In *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 126, the Court held that “[m]issed-break premium pay is indeed wages subject to the Cal. Lab. Code’s timely payment and reporting requirements....”

63. Cal. Lab. Code § 210 provides that every person who fails to pay the wages of each employee as provided in, *inter alia*, section 204, shall be subject to a penalty at a rate of \$100 for any initial violation and \$200 for any subsequent or willful violation, plus 25% of the amount unlawfully withheld.

64. Defendants failed to authorize and/or permit Plaintiff and Class Members to take all their meal and rest breaks to which they were entitled during their shifts, and nevertheless failed to pay them the required premium payments.

65. This compensation was due and payable twice each month.

66. In violation of California law, Defendants knowingly and willfully refuse to perform its obligations to provide Plaintiff and Class Members with compensation when due.

67. Therefore, Defendants committed, and continues to commit, the acts alleged herein knowingly and willfully, and in conscious disregard of Plaintiff and Class Members' rights. Plaintiff

1 and Class Members are thus entitled to recover nominal, actual, and compensatory damages, plus
2 interest, attorneys' fees, expenses, and costs of suit.

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

5 69. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

6 **SECOND CAUSE OF ACTION**

7 **Failure to Authorize and Permit and/or Make Available Meal Periods**

8 **Pursuant to Cal. Lab. Code §§ 226.7 and 512**

9 **(On Behalf of the Class)**

10 70. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
11 herein.

12 71. Defendants routinely fail to authorize, permit and/or make available compliant meal
13 periods to Plaintiff and Class Members.

14 72. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders require Defendants
15 to authorize and permit meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and the
16 Wage Orders prohibit employers from employing an employee for more than five (5) hours without
17 a meal period of not less than thirty minutes, and from employing an employee more than ten (10)
18 hours per day without providing the employee with a second meal period of not less than thirty (30)
19 minutes.

20 73. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer who
21 fails to provide a required meal period must, as compensation, pay the employee one hour of pay at
22 the employee's regular rate of compensation for each workday that the meal period was not
23 authorized and permitted.

24 74. Unless the employee is relieved of all duty during the thirty-minute meal period, the
25 employee is considered "on duty" and the meal period is counted as time worked under the
26 applicable Wage Orders.

27 75. Despite these requirements, Defendants have knowingly and willfully refused to
28 perform their obligations to authorize and permit and/or make available to Plaintiff and Class

1 Members the ability to take the second meal periods to which they are entitled when they work
2 more than 10 hours in a day. Plaintiff and Class Members are notified by their supervisors and/or
3 managers when they may take their meal periods during their shifts, but these supervisors and/or
4 managers failed to give notice of time to take the second meal period.

5 76. Plaintiff and Class Members do not receive the requisite premium pay for their missed
6 meal periods as required by California law. Defendants fail to pay Plaintiff and Class Members one
7 (1) hour of pay for each day an off-duty meal period was denied.

8 77. Defendants' conduct described herein violates Cal. Lab. Code §§ 226.7 and 512.
9 Therefore, pursuant to Cal. Lab. Code § 226.7(b), Plaintiff and Class Members are entitled to
10 compensation for the failure to authorize and permit and/or make available meal periods, plus
11 interest, attorneys' fees, expenses, and costs of suit.

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

14 79. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Authorize and Permit and/or Make Available Rest Periods**

17 **Pursuant to Cal. Lab. Code §§ 226.7**

18 **(On Behalf of the Class)**

19 80. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
20 herein.

21 81. Cal. Lab. Code §§ 226.7 and the applicable Wage Orders require employers to
22 authorize and permit non-exempt workers to take ten minutes of net rest time per four hours or
23 major fraction thereof of work, and to pay non-exempt workers their full wages during those rest
24 periods. Unless the employee is relieved of all duty during the ten-minute rest period, the employee
25 is considered "on duty" and the rest period is counted as time worked under the applicable Wage
26 Orders.

27 82. Under Cal. Lab. Code § 226.7(b) an employer must pay an employee denied a
28 required rest period is required to pay one hour of pay at the employee's regular rate of

1 compensation for each workday that the rest period was not authorized and permitted and/or not
2 made available.

3 83. Despite these requirements, Defendants knowingly and willfully refuse to perform
4 its obligations to authorize and permit and/or make available to Plaintiff and Class Members their
5 third rest periods when they work more than 10 hours in a day. Plaintiff and Class Members are
6 notified by their supervisors and/or managers when they may take their breaks during their shifts,
7 but these supervisors and/or managers failed to give notice of time to take the third rest breaks.

8 84. Plaintiff and Class Members also do not receive premium pay for their missed rest
9 breaks as required by California law.

10 85. Therefore, pursuant to Cal. Lab. Code § 226.7(b), Plaintiff and Class Members are
11 entitled to compensation for the failure to authorize and permit and/or make available rest periods,
12 plus interest, attorneys' fees, expenses, and costs of suit.

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

15 87. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

16 **FOURTH CAUSE OF ACTION**

17 **Failure to Provide Accurate Itemized Wage Statements**

18 **Pursuant to Cal. Lab. Code § 226**

19 **(On Behalf of the Class)**

20 88. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
21 herein.

22 89. Defendants do not provide Plaintiff and Class Members with accurate itemized wage
23 statements as required by California law.

24 90. Cal. Lab. Code § 226(a) provides that:

25 Every employer shall, semimonthly or at the time of each payment of wages, furnish
26 each of his or her employees, either as a detachable part of the check, draft, or voucher
27 paying the employee's wages, or separately when wages are paid by personal check
28 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
total hours worked by the employee, ... (4) all deductions, provided that all deductions
made on written orders of the employee may be aggregated and shown as one item,
(5) net wages earned, (6) the inclusive dates of the period for which the employee is

1 paid, (7) the name of the employee and his or her social security number, (8) the name
2 and address of the legal entity that is the employer, and (9) all applicable hourly rates
in effect during the pay period and the corresponding number of hours worked at each
hourly rate by the employee.

3 91. The IWC Wage Order also establishes this requirement. *See* IWC Wage Order 7-
4 2001(7).

5 92. Cal. Lab. Code § 226(e) provides:

6 An employee suffering injury as a result of a knowing and intentional failure by an
7 employer to comply with subdivision (a) is entitled to recover the greater of all actual
8 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
one hundred dollars (\$100) per employee for each violation in a subsequent pay
period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and is
entitled to an award of costs and reasonable attorney's fees.

9
10 93. Defendants do not provide timely, accurate itemized wage statements to Plaintiff and
11 Class Members in accordance with Cal. Lab. Code § 226(a) and the IWC Wage Orders. The wage
12 statements Defendants provide their employees, including Plaintiff and Class Members, do not
13 accurately reflect actual gross wages earned and/or actual net wages earned. They do not include
14 premium pay for missed meal periods and rest periods.

15 94. Plaintiff and Class Members seek to recover actual damages, costs and attorneys' fees
16 under this section.

17 95. Defendants are liable to Plaintiff and the Class Members for the amounts described
18 above in addition to the civil penalties set forth below, with interest thereon. Furthermore, Plaintiff
19 is entitled to an award of attorneys' fees and costs as set forth below, pursuant to Cal. Lab. Code §
20 226(e).

21 96. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

22 **FIFTH CAUSE OF ACTION**

23 **Waiting Time Penalties**

24 **Pursuant to Cal. Lab. Code §§ 201-203**

25 **(On Behalf of the Class)**

26 97. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

28 98. Defendants did not provide Plaintiff, and other Class Members who left their

1 employment with Defendants, with their wages when due under California law after their
2 employment with Defendants ended.

3 99. Cal. Lab. Code § 201 provides:

4 If an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately.

6 100. Cal. Lab. Code § 202 provides:

7 If an employee not having a written contract for a definite period quits his or her
8 employment, his or her wages shall become due and payable not later than 72 hours
9 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.

10 101. Cal. Lab. Code § 203 provides, in relevant part:

11 If an employer willfully fails to pay, without abatement or reduction, in accordance
12 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged
13 or who 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 the
wages shall not continue for more than 30 days.

14 102. Plaintiff and some of the Class Members left their employment with Defendants
15 during the statutory period, at which time Defendants owed them unpaid wages. These earned, but
16 unpaid, wages derive from unpaid premium payments for noncompliant meal periods and rest
17 periods.

18 103. Defendants willfully refuse and continue to refuse to pay Plaintiff and Class Members
19 all the wages that are due and owing to them for premium payments for missed meal and rest
20 periods, upon the end of their employment. As a result of Defendants' actions, Plaintiff and Class
21 Members have suffered and continue to suffer substantial losses, including lost earnings, and
22 interest.

23 104. Defendants' willful failure to pay Plaintiff and Class Members the wages due and
24 owing them constitutes a violation of Cal. Lab. Code §§ 201-202. As a result, Defendants are liable
25 to Plaintiff and proposed Class Members for all penalties owing pursuant to Cal. Lab. Code §§ 201-
26 203.

27 105. In addition, addition, Cal. Lab. Code § 203 provides that an employee's wages will
28 continue as a penalty up to thirty days from the time the wages were due. Therefore, the Plaintiff

1 and Class Members are entitled to penalties pursuant to Cal. Lab. Code § 203, plus interest.

2 106. Wherefore, Plaintiff and Class Members request relief as hereinafter provided.

3 **SIXTH CAUSE OF ACTION**

4 **Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.***

5 **(On Behalf of the Class)**

6 107. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
7 herein.

8 108. Cal. Bus. & Prof. Code §§ 17200, *et seq.*, prohibits unfair competition in the form of
9 any unlawful, unfair, or fraudulent business acts or practices.

10 109. Cal. Bus. & Prof. Code § 17204 allows a person injured by the unfair business acts
11 or practices to prosecute a civil action for violation of the UCL.

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

17 111. Beginning at an exact date unknown to Plaintiff, but at least since the date four years
18 prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as defined
19 by the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices
20 described in this Complaint, including, but not limited to:

- 21 a. violations of Cal. Lab. Code §§ 200 and 204 pertaining to timely payment of wages;
- 22 b. violations of Cal. Lab. Code §§ 226.7 and 512 and Wage Order 7-2001 pertaining to
- 23 meal and rest periods;
- 24 c. violations of Cal. Lab. Code § 226 regarding accurate, timely itemized wage
- 25 statements;
- 26 d. violations of Cal. Lab. Code §§ 201-203 pertaining to payment of all wages owed
- 27 during employment and following separation from employment;

28 112. The violations of these laws and regulations, as well as of the fundamental California

1 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of Cal.
2 Bus. & Prof. Code §§ 17200, *et seq.*

3 113. The acts and practices described above constitute unfair, unlawful, and fraudulent
4 business practices, and unfair competition, within the meaning of Cal. Bus. & Prof. Code §§ 17200,
5 *et seq.* Among other things, the acts and practices have taken from Plaintiff and the Class wages
6 rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage over
7 law-abiding employers and competitors.

8 114. Cal. Bus. & Prof. Code § 17203 provides that a court may make such orders or
9 judgments as may be necessary to prevent the use or employment by any person of any practice
10 which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
11 Defendants from repeating the unlawful, unfair, and fraudulent business acts and practices alleged
12 above.

13 115. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
14 and Class Members have suffered a loss of money and property, in the form of unpaid wages, which
15 are due and payable to them.

16 116. Cal. Bus. & Prof. Code § 17203 provides that the Court may restore to any person in
17 interest any money or property which may have been acquired by means of such unfair competition.

18 117. Plaintiff and Class Members are entitled to restitution pursuant to Cal. Bus. & Prof.
19 Code § 17203 for all wages and payments unlawfully withheld from employees during the four-
20 year period prior to the filing of this Complaint. Plaintiff's success in this action will enforce
21 important rights affecting the public interest and, in that regard, Plaintiff sues on behalf of himself
22 as well as others similarly situated. Plaintiff and Class Members seek and are entitled to unpaid
23 wages, declaratory and injunctive relief, and all other equitable remedies owing to them.

24 118. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.

25 119. There is a financial burden involved in pursuing this action, the action is seeking to
26 vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by
27 forcing him to pay attorneys' fees from any recovery thereof. Attorneys' fees are appropriate
28 pursuant to Cal. Code Civ. Proc. § 1021.5, and otherwise.

120. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SEVENTH CAUSE OF ACTION

Penalties for Failure to Furnish Records

Pursuant to Cal. Lab. Code §§ 1198.5, 432, and 226

(On Behalf of Plaintiff Individually Against Defendants)

121. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

122. Cal. Lab. Code § 1198.5(a) states that “[e]very current and former employee, or their representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” “The employer shall make the contents of those personnel records available for inspection . . . not later than 30 calendar days from the date the employer receives a written request” unless the parties agree in writing to a date beyond 30 calendar days.” *Id.* § 1198.5(b)(1). If an employer fails to permit an employee or their representative to inspect or copy personnel records within the time specified by § 1198.5, the employee may recover a penalty of \$750 from the employer. *Id.* § 1198.5(k).

123. Cal. Lab. Code § 432 states: “If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he [or she] shall be given a copy of the instrument upon request.” Documents covered by Cal. Lab. Code § 432, including potential employment agreements, are also covered by § 1198.5.

124. Cal. Lab. Code § 226(c) states, in part: “An employer who receives a written or oral request to inspect or receive a copy of records [pertaining to a current or former employee’s pay records] shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” If the employer fails to comply with this written request for pay records within that 21-day time period, such failure “entitles the current or former employee . . . to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” *Id.* § 226(f).

125. On May 5, 2023, pursuant to Cal. Lab. Code §§ 1198.5, 432, and 226, Plaintiff sent Defendant Main Electric Supply Company LLC a written request for his personnel records, payroll

1 records, and copies of any documents signed by Plaintiff relating to the obtaining or holding of
2 employment, via certified mail. On May 15, Defendant Main Electric Supply Company LLC sent
3 an email to Plaintiff's counsel indicating that Plaintiff was not its employee. As a result, Defendant
4 Main Electric Supply Company LLC did not produce any records within the applicable 30- and 21-
5 day time limits, nor did it request an extension of time.

6 126. On May 5, 2023, pursuant to Cal. Lab. Code §§ 1198.5, 432, and 226, Plaintiff sent
7 Defendants Express Services, Inc. a written request for his personnel records, payroll records, and
8 copies of any documents signed by Plaintiff relating to the obtaining or holding of employment, via
9 certified mail. Defendants' human resources department received the written request on May 10,
10 2023, per the return receipt received by Plaintiff's counsel. Defendant Express Services, Inc. did
11 not produce any records within the applicable 30-day and 21-day time limits, nor did it request an
12 extension of time.

13 127. Accordingly, Plaintiff is entitled to recover \$750 for Defendants' failure to make his
14 personnel records and any written instruments available to Plaintiff within 30 days of receiving the
15 written request, and an additional \$750 for Defendants' failure to make his payroll records available
16 within 21 days of receiving the written request. Plaintiff is also entitled to recover his reasonable
17 attorneys' fees and costs pursuant to Cal. Lab. Code § 1198.5(l).

18 128. Wherefore, Plaintiff requests relief as hereinafter provided.

19 **EIGHTH CAUSE OF ACTION**

20 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**

21 **for Violations of Cal. Lab. Code § 204**

22 **(Failure to Pay All Wages)**

23 **(On Behalf of the Aggrieved Employees)**

24 129. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 130. Cal. Lab. Code § 204 provides in part that "all wages . . . earned by any person in any
27 employment are due and payable twice during each calendar month, on days designated in advance
28 by the employer as the regular paydays."

1 131. Cal. Lab. Code § 210 provides that every person who fails to pay the wages of each
2 employee as provided in, *inter alia*, section 204, shall be subject to a penalty at a rate of \$100 for
3 any initial violation and \$200 for any subsequent or willful violation, plus 25% of the amount
4 unlawfully withheld.

5 132. Defendants failed to authorize and/or permit Plaintiff and Aggrieved Employees take
6 all their meal and rest breaks to which they were entitled during their shifts, and nevertheless failed
7 to pay them the required premium payments.

8 133. This compensation was due and payable twice each month.

9 134. In violation of California law, Defendants knowingly and willfully refuse to perform
10 its obligations to provide Plaintiff and Aggrieved Employees with compensation when due.

11 135. Therefore, Defendants committed, and continue to commit, the acts alleged herein
12 knowingly and willfully, and in conscious disregard of Plaintiff and Aggrieved Employees' rights.

13 136. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
14 to be assessed and collected by the LWDA for a violation of the Cal. Lab. Code on behalf of himself
15 or herself and other current or former employees pursuant to the procedures set forth in Cal. Lab.
16 Code § 2699.3. Cal. Lab. Code § 2699(a) provides:

17 Notwithstanding any other provision of law, any provision of this code that provides
18 for a civil penalty to be assessed and collected by the Labor and Workforce
19 Development Agency or any of its departments, divisions, commissions, boards,
20 agencies or employees, for a violation of this code, may, as an alternative, be recovered
through a civil action brought by an aggrieved employee on behalf of himself or
herself and other current or former employees.

21 137. Plaintiff seeks to recover civil penalties from Defendants pursuant to Cal. Lab. Code
22 § 2699(a) for each failure by Defendants, alleged above, to timely pay Plaintiff and Aggrieved
23 Employees timely pay all wages, in compliance with Cal. Lab. Code § 204 in the amounts
24 established by Cal. Lab. Code § 210. Plaintiff seeks such penalties as an alternative to the penalties
25 available under Cal. Lab. Code § 210, as prayed for herein.

26 138. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay for
27 all wages owed in violation of Cal. Lab. Code § 204 throughout California on behalf of himself, the
28 State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(a).

139. To the extent that any violation alleged herein does not carry penalties under Cal. Lab. Code § 2699(a), Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff and Aggrieved Employees for each pay period in which he or she was aggrieved, in the amount established by Cal. Lab. Code § 2699(f).

140. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file his claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with Cal. Lab. Code § 2699.3(a).

141. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

142. Wherefore, Plaintiff requests relief as hereinafter provided.

NINTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f)

for Violations of Cal. Lab. Code §§ 226.7 and 512

(Failure to Authorize and Permit and/or Make Available Meal Periods)

(On Behalf of the Aggrieved Employees)

143. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

144. Defendants routinely fail to authorize, permit and/or make available compliant meal periods to Plaintiff and Aggrieved Employees.

145. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders require Defendants to authorize and permit meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and the Wage Orders prohibit employers from employing an employee for more than five (5) hours without a meal period of not less than thirty minutes, and from employing an employee more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes.

146. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer who

1 fails to provide a required meal period must, as compensation, pay the employee one hour of pay at
2 the employee's regular rate of compensation for each workday that the meal period was not
3 authorized and permitted.

4 147. Unless the employee is relieved of all duty during the thirty-minute meal period, the
5 employee is considered "on duty" and the meal period is counted as time worked under the
6 applicable Wage Orders.

7 148. Despite these requirements, Defendants have knowingly and willfully refused to
8 perform their obligations to authorize and permit and/or make available to Plaintiff and Aggrieved
9 Employees the ability to take the second meal periods to which they are entitled when they work
10 more than 10 hours in a day. Plaintiff and Aggrieved Employees are notified by their supervisors
11 and/or managers when they may take their meal periods during their shifts, but these supervisors
12 and/or managers failed to give notice of time to take the second meal period.

13 149. Plaintiff and Aggrieved Employees do not receive the requisite premium pay for their
14 missed meal periods as required by California law. Defendants fail to pay Plaintiff and Aggrieved
15 Employees one (1) hour of pay for each day an off-duty meal period was denied. Defendants'
16 conduct described herein violates Cal. Lab. Code §§ 226.7 and 512.

17 150. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for
18 each Aggrieved Employee per pay period for the initial violation of a Cal. Lab. Code provision that
19 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
20 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
21 each Aggrieved Employee per pay period for each subsequent violation of a Cal. Lab. Code
22 provision that does not provide a civil penalty if, at the time of the violation, the employer employs
23 one or more employees.

24 151. Plaintiff seeks to recover civil penalties from Defendants for their violations of the
25 meal period requirements of Cal. Lab. Code §§ 226.7 and 512, throughout California on behalf of
26 himself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699.

27 152. Pursuant to Cal. Lab. Code § 2699.3(a)(1) and (2), Plaintiff provided the LWDA with
28 notice of his intention to file his claims. Sixty-five calendar days have passed without notice from

1 the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
2 compliance with § 2699.3(a).

3 153. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
4 for the civil penalties set forth in this complaint, with interest thereon. Plaintiff is also entitled to an
5 award of attorneys' fees and costs as set forth below.

6 154. Wherefore, Plaintiff requests relief as hereinafter provided.

7 **TENTH CAUSE OF ACTION**

8 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

9 **for Violations of Cal. Lab. Code § 226.7**

10 **(Failure to Authorize and Permit and/or Make Available Rest Periods)**

11 **(On Behalf of the Aggrieved Employees)**

12 155. Plaintiff re-allege and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 156. Cal. Lab. Code § 226.7 and the applicable Wage Orders require employers to
15 authorize and permit non-exempt workers to take ten minutes of net rest time per four hours or
16 major fraction thereof of work, and to pay non-exempt workers their full wages during those rest
17 periods. Unless the employee is relieved of all duty during the ten-minute rest period, the employee
18 is considered "on duty" and the rest period is counted as time worked under the applicable Wage
19 Orders.

20 157. Under Cal. Lab. Code § 226.7(b) an employer must pay an employee denied a
21 required rest period is required to pay one hour of pay at the employee's regular rate of
22 compensation for each workday that the rest period was not authorized and permitted and/or not
23 made available.

24 158. Despite these requirements, Defendants knowingly and willfully refuse to perform
25 its obligations to authorize and permit and/or make available to Plaintiff and Aggrieved Employees
26 their third rest periods when they work more than 10 hours in a day. Plaintiff and Aggrieved
27 Employees are notified by their supervisors and/or managers when they may take their breaks
28 during their shifts, but these supervisors and/or managers failed to give notice of time to take the

1 third rest breaks.

2 159. Plaintiff and Aggrieved Employees also do not receive premium pay for their missed
3 rest breaks as required by California law.

4 160. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
5 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
6 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
7 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
8 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
9 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
10 more employees.

11 161. Plaintiff seeks to recover civil penalties from Defendants for their violations of the
12 rest break requirements of Cal. Lab. Code § 226.7 throughout California on behalf of himself, the
13 State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699.

14 162. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiff provided the LWDA
15 with notice of his intention to file his claims. Sixty-five calendar days have passed without notice
16 from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
17 compliance with Cal. Lab. Code § 2699.3(a).

18 163. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
19 for the civil penalties set forth in this complaint, with interest thereon. Plaintiff is also entitled to an
20 award of attorneys' fees and costs as set forth below.

21 164. Wherefore, Plaintiff requests relief as hereinafter provided.

22 **ELEVENTH CAUSE OF ACTION**

23 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**

24 **for Violations of Cal. Lab. Code § 226**

25 **(Provide and Maintain Accurate, Itemized Wage Statements)**

26 **(On Behalf of the Aggrieved Employees)**

27 165. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
28 herein.

1 166. Defendants do not provide Plaintiff and Aggrieved Employees with accurate itemized
2 wage statements as required by California law.

3 167. Cal. Lab. Code § 226(a) provides that:

4 Every employer shall, semimonthly or at the time of each payment of wages, furnish
5 each of his or her employees, either as a detachable part of the check, draft, or voucher
6 paying the employee's wages, or separately when wages are paid by personal check
7 or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
8 total hours worked by the employee, ... (4) all deductions, provided that all deductions
9 made on written orders of the employee may be aggregated and shown as one item,
10 (5) net wages earned, (6) the inclusive dates of the period for which the employee is
11 paid, (7) the name of the employee and his or her social security number, (8) the name
12 and address of the legal entity that is the employer, and (9) all applicable hourly rates
13 in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate by the employee.

15 168. The IWC Wage Order also establishes this requirement. *See* IWC Wage Order 7-
16 2001(7).

17 169. Cal. Lab. Code § 226(e) provides:

18 An employee suffering injury as a result of a knowing and intentional failure by an
19 employer to comply with subdivision (a) is entitled to recover the greater of all actual
20 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
21 one hundred dollars (\$100) per employee for each violation in a subsequent pay
22 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and is
23 entitled to an award of costs and reasonable attorney's fees.

24 170. Defendants do not provide timely, accurate itemized wage statements to Plaintiff and
25 Aggrieved Employees in accordance with Cal. Lab. Code § 226(a) and the IWC Wage Orders. The
26 wage statements Defendants provide their employees, including Plaintiff and Aggrieved
27 Employees, do not accurately reflect actual gross wages earned and/or actual net wages earned.
28 They do not include premium pay for missed meal periods and rest periods.

171. Accordingly, Defendants have knowingly and willfully failed to provide timely,
accurate itemized wage statements to Plaintiff and the Aggrieved Employees in accordance with
Cal. Lab. Code § 226 and the IWC Wage Order.

172. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself
or herself and other current or former employees pursuant to the procedures set forth in Cal. Lab.
Code § 2699.3. Cal. Lab. Code § 2699(a) provides:

1 Notwithstanding any other provision of law, any provision of this code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce
3 Development Agency or any of its departments, divisions, commissions, boards,
4 agencies or employees, for a violation of this code, may, as an alternative, be recovered
5 through a civil action brought by an aggrieved employee on behalf of himself or
6 herself and other current or former employees.

7 173. Plaintiff seeks to recover civil penalties from Defendants pursuant to Cal. Lab. Code
8 § 2699(a) for each failure by Defendants, alleged above, to maintain and provide Plaintiff and
9 Aggrieved Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code §
10 226(a) in the amounts established by Cal. Lab. Code §§ 226(e) and 226.3. Plaintiff seeks such
11 penalties as an alternative to the penalties available under Cal. Lab. Code §§ 226(e) and 226.3, as
12 prayed for herein.

13 174. To the extent that any violation alleged herein does not carry penalties under Cal.
14 Lab. Code § 2699(a), Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff
15 and Aggrieved Employees for each pay period in which he or she was aggrieved, in the amount
16 established by Cal. Lab. Code § 2699(f).

17 175. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiff provided the LWDA
18 with notice of his intention to file his claims. Sixty-five calendar days have passed without notice
19 from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
20 compliance with Cal. Lab. Code § 2699.3(a).

21 176. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
22 for the civil penalties set forth in this complaint, with interest thereon. Plaintiff is also entitled to an
23 award of attorneys' fees and costs as set forth below.

24 177. Wherefore, Plaintiff requests relief as hereinafter provided.

25 **TWELFTH CAUSE OF ACTION**

26 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**

27 **for Violations of Cal. Lab. Code §§ 201-203**

28 **(Waiting Time Penalties)**

(On Behalf of the Aggrieved Employees)

178. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
herein.

1 179. Defendants did not provide Plaintiff, and other Aggrieved Employees who left their
2 employment with Defendants, with their wages when due under California law after their
3 employment with Defendants ended.

4 180. Cal. Lab. Code § 201 provides:

5 If an employer discharges an employee, the wages earned and unpaid at the time of
6 discharge are due and payable immediately.

7 181. Cal. Lab. Code § 202 provides:

8 If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 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.

11 182. Cal. Lab. Code § 203 provides, in relevant part:

12 If an employer willfully fails to pay, without abatement or reduction, in accordance
13 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged
14 or who 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 the
wages shall not continue for more than 30 days.

15 183. Plaintiff and some of the Aggrieved Employees left their employment with
16 Defendants during the statutory period, at which time Defendants owed them unpaid wages. These
17 earned, but unpaid, wages derive from unpaid premium payments for noncompliant meal periods
18 and rest periods.

19 184. Defendants willfully refuse and continue to refuse to pay Plaintiff and Aggrieved
20 Employees all the wages that are due and owing to them for premium payments for missed meal
21 and rest periods, upon the end of their employment. As a result of Defendants' actions, Plaintiff and
22 Aggrieved Employees have suffered and continue to suffer substantial losses, including lost
23 earnings, and interest.

24 185. Defendants' willful failure to pay Plaintiff and the Aggrieved Employees the wages
25 due and owing them constitutes a violation of Cal. Lab. Code §§ 201-203. In addition, § 203
26 provides that an employee's wages will continue as a penalty up to thirty days from the time the
27 wages were due. Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to
28 this section.

1 186. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
2 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself
3 or herself and other current or former employees pursuant to the procedures set forth in Cal. Lab.
4 Code § 2699.3. Cal. Lab. Code § 2699(a) provides:

5 Notwithstanding any other provision of law, any provision of this code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce
7 Development Agency or any of its departments, divisions, commissions, boards,
8 agencies or employees, for a violation of this code, may, as an alternative, be recovered
9 through a civil action brought by an aggrieved employee on behalf of himself or
10 herself and other current or former employees.

11 187. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure
12 by Defendants, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved
13 Employees in compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab.
14 Code § 203. Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab.
15 Code § 203, as prayed for herein.

16 188. To the extent that any violation alleged herein does not carry penalties under Cal.
17 Lab. Code § 2699(a), Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff
18 and Aggrieved Employees for each pay period in which he or she was aggrieved, in the amount
19 established by Cal. Lab. Code § 2699(f).

20 189. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiff provided the LWDA
21 with notice of his intention to file his claims. Sixty-five calendar days have passed without notice
22 from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
23 compliance with Cal. Lab. Code § 2699.3(a).

24 190. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
25 for the civil penalties set forth in this complaint, with interest thereon. Plaintiff is also entitled to an
26 award of attorneys' fees and costs as set forth below.

27 191. Wherefore, Plaintiff requests relief as hereinafter provided.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the Cal. Lab. Code and Cal. Bus. & Prof. Code;
- b. For a declaratory judgment that Defendants have violated the Cal. Lab. Code, California law, and public policy as alleged herein;
- c. For a declaratory judgment that Defendants have violated Cal. Bus. & Prof. Code §§ 17200, *et seq.*, as a result of the aforementioned violations of the Cal. Lab. Code;
- d. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;
- e. For an order awarding Plaintiff and Class Members compensatory damages, including lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money, actual damages, treble damages, punitive damages, and all other sums of money owed to Plaintiff and Class Members, together with interest on these amounts, according to proof;
- f. For an order awarding civil penalties to the full extent provided for by the PAGA;
- g. For an order awarding civil penalties pursuant to the Cal. Lab. Code, and provisions cited herein, with interest thereon;
- h. Individual penalties for the employers' failure to provide records upon request;
- i. For an award of reasonable attorneys' fees as provided by the Cal. Lab. Code, including Cal. Lab. Code § 2699(g)(1), Cal. Code Civ. Proc. § 1021.5, and any other applicable law;
- j. For all costs of suit;
- k. For interest as provided by applicable law; and
- l. For such other and further relief as this Court deems just and proper.

1 Dated: July 26, 2023

Respectfully Submitted,

2
3 

4 Carolyn H. Cottrell
Ori Edelstein
Kristabel Sandoval
5 **SCHNEIDER WALLACE**
6 **COTTRELL KONECKY LLP**

7 *Attorneys for Plaintiff and the Class,*
8 *the State of California, and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4
5 Dated: July 26, 2023

Respectfully Submitted,

6 

7 Carolyn H. Cottrell

8 Ori Edelstein

Kristabel Sandoval

9 **SCHNEIDER WALLACE**

COTTRELL KONECKY LLP

10 *Attorneys for Plaintiff and the Class,*
11 *the State of California and Aggrieved Employees*