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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 **RAMON FELIX**, an individual, on behalf of
13 himself and other similarly situated
employees,

14 Plaintiff,

15 vs.

16 **OWB PACKERS, LLC**, a California
17 limited liability company, and **DOES 1-50**,

18 Defendant.

Unlimited Jurisdiction

Case No.: 37-2023-00030006-CU-OE-NC

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES:

1. FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES
2. FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
3. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
4. FAILURE TO PAY TIMELY WAGES UPON CESSATION OF EMPLOYMENT
5. UNFAIR COMPETITION
6. PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004 (PAGA)

DEMAND FOR JURY TRIAL

1 Plaintiff Ramon Felix (“Plaintiff”), on behalf of himself and all other similarly situated
2 persons and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action lawsuit brought on behalf of Plaintiff and others similarly
5 situated, under Code of Civil Procedure § 382, seeking unpaid wages and interest thereon for off-
6 the-clock work, illegal time rounding practices, remedies for failure to provide “duty-free” meal
7 periods, inaccurate wage statement penalties, waiting time penalties in the form of continuation
8 wages for failure to timely pay employees, equitable relief, reasonable attorneys’ fees and costs
9 from Defendant OWB Packers, LLC (“Defendant”). Plaintiff, as a proxy for the State of California,
10 also brings a representative law enforcement action under the Private Attorneys General Act of
11 2004 (“PAGA”), Labor Code Section 2698 et seq., to recover civil penalties against Defendant.

12 **JURISDICTION AND VENUE**

13 2. Venue is proper in the County of San Diego because Defendant OWB Packers,
14 LLC’s corporate offices are located in Solano Beach, California, work was performed by
15 employees for Defendant OWB Packers, LLC in the County of San Diego, and the legal
16 obligations of Defendant OWB Packers, LLC to Plaintiff and other similarly situated employees
17 were breached in San Diego County, California.

18 3. This Court has jurisdiction over this action under Article 6 of the California
19 Constitution and California Code of Civil Procedure § 410.10.

20 4. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for unpaid
21 overtime and minimum wages under California Labor Code § 1194.

22 5. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for waiting
23 time penalties and meal period violations under California Labor Code § 218 *et seq.*

24 6. This Court has jurisdiction over Plaintiff’s and the Class Members’ claims for
25 restitution of unpaid wages and other ill-gotten benefits arising from Defendant’s unlawful and/or
26 unfair business practices under California Business & Professions Code §§17200 *et seq.*

1 **THE PARTIES**

2 **A. Plaintiff**

3 7. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was
4 a resident of California. During the relevant period, Plaintiff worked as a forklift driver at
5 Defendant's beef processing plant California. Defendant employed Plaintiff from approximately
6 April 13, 2023 to on or about May 5, 2023.

7 8. Plaintiff seeks to represent similarly situated non-exempt employees of Defendant
8 who, during the relevant period, were subjected to the following violations of California laws:
9 Labor Code Sections 201-203, 226, 226.7, 510, 512, 1194, 1197, 1198, 1199 the applicable
10 Industrial Welfare Commission ("IWC") Wage Orders, including, Wage Order 8-2001, and Bus.
11 & Prof. Code §§ 17200 *et seq.*

12 9. As such, Plaintiff appears in this action on behalf of himself and on behalf of all
13 others similarly situated.

14 **B. Defendant**

15 10. Plaintiff is informed and believes, and thereon alleges, that OWB Packers, LLC is
16 a California limited liability company with its principal place of business located in San Diego,
17 California. Defendant OWB Packers, LLC processes and packs beef for distribution worldwide.

18 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
19 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
20 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
21 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
22 amend this complaint to allege the true names and capacities of the DOE Defendants when
23 ascertained. Defendant OWB Packers, LLC and the DOE Defendants are collectively referred to
24 herein as "Defendant."

25 12. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
26 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
27 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
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Defendant are legally attributable to one or more of the other Defendants.

FACTS RELEVANT TO PLAINTIFF'S CLAIMS

13. At all relevant times, Defendant employed Plaintiff and other similarly situated employees subject to Labor Code Sections 510, 1194, and 1197 and the Industrial Wage Order Commission ("IWC") Wage Orders, including Wage Order 8-2001. Under Labor Code Section 1197 and subsection 4 of Wage Order 8, Plaintiff and other similarly situated employees were entitled to receive minimum wages for all hours worked. Likewise, subsection 3 of Wage Order 8 entitled Plaintiff and other similarly situated employees to overtime wages for all hours worked over 8 hours per day or 40 hours per week. Defendant failed to pay all wages for all hours worked in violation of Labor Code Sections 1194 and 1197 and Wage Order 8-2001.

14. Defendant's violations of the applicable Wage Orders constitute a violation of Labor Code Section 558, which imposes civil penalties upon an employer for violations of any provisions regulating hours and days or work in any of the IWC. Labor Code 558(a)(1) and (2). Defendant's violations of Wage Order 8-2001 (3) and (4) also constitute violations of Labor Code Sections 1198 and 1199, which prohibit employment under conditions of labor that violate the IWC Wage Orders and subject Defendant to additional civil penalties. See Wage Order 8-2001(20).

15. As detailed below, Plaintiff suffered and permitted Plaintiff and other similarly situated employees to perform several work-related pre-shift and post-shift tasks. However, Defendant only compensated Plaintiff and other similarly situated employees according to their scheduled worktime. In other words, Defendant did not compensate Plaintiff and other similarly situated employees for any pre-shift or post-shift work. As a result of the various off-the-clock work, Plaintiff and other similarly situated employees spent between approximately forty to sixty minutes each day performing work related tasks without being compensated.

16. Security Checks: Upon entering Defendant's facility, Plaintiff and other similarly situated employees were required to undergo security checks. Each employee was required to

empty their pockets and place personal belongings in plastic bins and walk through a metal detector. If a metal detector went off during an employee's security check, the employee was required to step aside for further inquiry and search. When this occurred, the other employees waiting in line had to wait until further inquiry and search was complete. Plaintiff and other similarly situated employees were also required to undergo the same security procedure when leaving Defendant's facility. Each security check took approximately 5-10 minutes. None of the time Plaintiff and similarly situated employees spent undergoing Defendant's security check was compensated as it occurred prior to clocking in and after clocking out. Thus, Defendant failed to compensate Plaintiff and other similarly situated employees for the ten to twenty minutes they spent undergoing security checks each day.

17. Donning and Doffing Protective Gear: After going through the security check (detailed above), but prior to clocking in, Plaintiff and other similarly situated employees were required to don protective equipment, which consisted of a hard hat, jacket, and overalls. The protective equipment was stored in lockers located 10 minutes from the nearest time clock. Similarly, at the end of each shift, but after clocking out, Plaintiff and other similarly situated employees were required to doff their protective gear and place it in their locker. Plaintiff and other similarly situated employees spent approximately 10 minutes each workday donning and doffing the protective gear. Plaintiff and other similarly situated employees were not adequately compensated for all of the time they spent donning and doffing protective gear.

18. Clocking In: After donning the required equipment, Plaintiff and other similarly situated employees had to walk for approximately ten minutes to reach the location where the time clocks were located. Although there were several time clock machines available, each employee was only permitted to clock in using their designated machine.¹ Thus, despite there being other machines available, employees were often forced to wait in line to clock in because they were only permitted to clock in using their designated machine. This often led to wait times of around four

¹ Employees' time clock designation was based on their employee number.

1 minutes to clock in.

2 19. Time Rounding: At all relevant times, Defendant had a policy and practice of
3 rounding recorded work time for payroll purposes in a manner which resulted in underpayment of
4 work time. Plaintiff and other similarly situated employees were required to clock in fifteen
5 minutes before their designated start time but were not paid for the time they clocked in early.
6 Instead, Plaintiff and other similarly situated employees were paid only for the hours worked after
7 the designated start time of their shift. Defendant's rounding policy unilaterally benefitted
8 Defendant. While Defendant rounded for employees who were fifteen minutes early, it did not
9 similarly round for employees who clocked in within fifteen minutes *after* their scheduled shift
10 start time. Defendant's rounding is neither neutral on its face nor in its application and had the
11 result of reducing wages paid to employees.

12 20. Meal Periods: During the relevant time period, Defendant failed to provide,
13 authorize, and/or permit Plaintiff and other similarly situated employees meal periods that
14 complied with California Law. Under Labor Code Sections 226.7 and 512, and the applicable IWC
15 Wage Orders, including Wage Order 8-2001, "No employer shall employ any person, for a work
16 period of more than five (5) hours without a meal period of not less than 30 minutes...Unless the
17 employee is relieved of all duty during a 30 minute meal period, the meal period shall be
18 considered an "on duty" meal period and counted as time worked." Wage Order 8-2001 § 11.
19 Under California law, requiring employees to remain on the premises for their meal breaks
20 effectively constitutes an on-duty meal period and must be paid. *Bono Enterprises, In. v. Bradshaw*
21 (1995) 32 Cal.App.4th 968 (holding that employee meal periods must be compensated where an
22 employee is precluded from leaving the employer's premises for meal periods because the
23 employee remains under the control of the employer and is therefore not relieved of all duty).

24 21. Additionally, "[i]f an employer fails to provide an employee a meal... in
25 accordance with state law, ..., the employer shall pay the employee one additional hour of pay at
26 the employee's regular rate of compensation for each workday that the meal period... is not
27 provided." Wage Order 8-2001(11); see also Lab. Code § 226.7(c) ("If an employer fails to provide

1 an employee a meal... period in accordance with state law, ..., the employer shall pay the
2 employee one additional hour of pay at the employee's regular rate of compensation for each
3 workday that the meal... period is not provided.”).

4 22. During the relevant period, Plaintiff and other similarly situated employees were
5 required to remain on company premises during meal periods thereby constituting “on duty” meal
6 periods. Accordingly, Plaintiff and other similarly situated employees were entitled to paid meal
7 period. However, Defendant failed to compensate Plaintiff and other similarly situated employees
8 for the on-duty meal periods.

9 23. Inaccurate Wage Statements: Labor Code Section 226(a) requires employers to
10 furnish accurate itemized wage statements in writing that show, inter alia, “(1) gross wages earned,
11 (2) total hours worked...”

12 24. Plaintiff and situated employees received wage statements that did not list all wages
13 earned, including the off the clock work, on-duty meal periods, and premium wages discussed
14 above. In *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93 (2022), the California
15 Supreme Court confirmed that premium pay for non-compliant meal periods are “wages” for
16 purposes of the Labor Code § 226. Employers therefore have an obligation to report such premium
17 pay on wage statements pursuant to Labor Code § 226. (*Id.* at 121.) As the above infractions
18 explain, Plaintiff and similarly situated California employees were entitled to premium wages that
19 were not paid and, therefore were not reported on wage statements, Therefore, Plaintiff and other
20 similarly situated employees are entitled to penalty payments pursuant to Labor Code Section 226.

21 25. Late Payment of Final Wages: Plaintiff and others similarly situated have ceased
22 their employment with Defendant. Upon the cessation of that employment relationship (as
23 prescribed by statute), they did not receive all wages owed. Namely, said former employees did
24 not receive all of their minimum and overtime wages and premium wages, as described above.
25 Those similarly situated, upon termination, did not receive all owed wages on the date of
26 termination. Therefore, Defendant has violated and continues to violate Labor Code Sections 201
27 and 202, because even if it pays employees timely, Defendant has not paid the aforementioned
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unpaid wages and wage premiums for meal break violations.

26. Likewise, Defendant has violated Section 203 by not paying the waiting time penalties for failure to comply with Sections 201 and 202. Pursuant to Labor Code Section 203, other similarly situated individuals are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

27. Plaintiff brings this action on behalf of himself and on behalf of the following Class and subclasses:

Class: All current and former non-exempt employees of Defendant OWB Packers, LLC. employed at any time during the period beginning four years prior to the filing of the Complaint through the date notice is mailed to the Class.

Wage Statement Subclass: All current and former non-exempt employees of Defendant OWB Packers, LLC employed at any time during the one year preceding the filing of the Complaint through the date notice is mailed to the Class.

Waiting Time Penalty Subclass: All current and former non-exempt employees of Defendant OWB Packers, LLC whose employment by OWB Packers, LLC in California ended at any time during the three years preceding the filing of the Complaint through the date notice is mailed to the Class, including, but not limited to, anyone who may have been reemployed by Defendant after their employment ended.

28. This action has been brought and may be properly maintained as a class action pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

29. **Numerosity:** Code of Civil Procedure § 382: members of the Class are so numerous that their individual joinder is impracticable. Plaintiff estimates that there are no less than 50 persons in each of the classes. The precise number of Class members and their addresses are

unknown to Plaintiff. However, Plaintiff is informed and believes that the number can be obtained from Defendant's records. Class members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

30. **Existence of Predominance of Common Questions of Fact and Law:** Code of Civil Procedure § 382: Common questions of law and fact exist as to all members of the Classes. These questions predominate over any questions effecting only individual members of the classes. These common factual and legal questions include:

- (a) Whether Defendant failed to pay class members all wages for time spent undergoing security checks;
- (b) Whether Defendant failed to pay class members all wages for time spent donning and doffing;
- (c) Whether Defendant failed to pay class members all wages for time spent waiting to clock in;
- (d) Whether Defendant reduced class members' wages through its time rounding policy;
- (e) Whether Defendant's time rounding policy is neutral on its face or in its application;
- (f) Whether Defendant failed to provide meal periods in in compliance with Labor Code §§ 512, 226.7 and the applicable IWC Wage Orders;
- (g) Whether Defendant failed to pay class members all wages owed for on-duty meal periods;
- (h) Whether Defendant issued accurate itemized wage statements;
- (i) Whether Defendant failed to provide class members who ceased employment with Defendant all wages owed at the time of the cessation of the employee-employer relationship;
- (j) Whether Defendant committed unlawful business practices or acts within the meaning of Business & Professions Code Sects. 17200 *et seq.*;

(k) Whether, as a consequence of Defendant's unlawful conduct, the members of the Classes are entitled to restitution, and/or equitable relief;

(l) Whether Defendant's affirmative defenses, if any, raise any common issues of law or fact as to Plaintiff and the class members as a whole.

31. **Typicality**: Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff, as an hourly paid employee, was exposed to the same unlawful business practices as the members of the classes. Plaintiff sustained the same types of injuries and losses that the Class members sustained. Plaintiff is subject to the same affirmative defenses as the members of the Class.

32. **Adequacy**: Plaintiff will adequately and fairly protect the interests of the members of the Class. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is represented by legal counsel who has substantial class action experience in civil litigation and employment law.

33. **Superiority**: A class action is superior to other available means for fair and efficient adjudication of the claims of the Class and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The monetary amounts due to many individual Class members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the Class to seek and obtain relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

3 **(By Plaintiff and the Class against Defendant)**

4 34. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
5 though set forth herein.

6 35. At all times relevant hereto, California Labor Code §§ 1194(a) and 1197 and the
7 applicable Wage Orders, including Section 4(A) of Wage Order 8, have required Defendant to pay
8 their employees the applicable minimum wage for all hours worked.

9 36. At all times relevant hereto, Plaintiff and the other members of the Classes were
10 employees of Defendant covered by Labor Code Sections 510 and 1194 and the applicable wage
11 orders, including Section 3(A) of Wage Order 8, which entitled them to overtime wages for all
12 hours worked over 8 hours in a day or over 40 hours in a week.

13 37. Plaintiff and the other members of the Class were not paid by Defendant during the
14 relevant period the applicable minimum wage for all hours worked and/or all overtime wages owed
15 because Defendant paid wages on the basis of rounded time that did not credit workers with all
16 time worked for pay purposes, and because Defendant suffered and permitted Plaintiff and other
17 similarly situated employees to perform work-related pre-shift and post-shift tasks off the clock,
18 including undergoing security checks, donning and doffing protective gear, and working through
19 meal periods. However, Defendant only compensated Plaintiff and other similarly situated
20 employees according to their scheduled shift times. In other words, Defendant did not compensate
21 Plaintiff and other similarly situated employees for any pre-shift or post-shift work. As a result of
22 the various off-the-clock work, Plaintiff and other similarly situated employees performed work-
23 related tasks each day without being compensated.

24 38. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
25 Class have suffered damages in an amount, subject to proof, to the extent they were not paid all
26 minimum and overtime wages for all hours actually worked.

27 39. Pursuant to Labor Code Sections 510, 1194, 1197 and 1197.1, as a result of the
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1 unlawful acts of Defendant, Plaintiff and other members of the Class are entitled to recover the
2 full amount of unpaid minimum and overtime wages in amounts to be determined at trial,
3 liquidated damages for failure to pay minimum wages, prejudgment interest, reasonable attorney's
4 fees and costs of suit.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS**

7 **(By Plaintiff and the Class against Defendant)**

8 40. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
9 though set forth herein.

10 41. Throughout Plaintiff's employment, Defendant employed Plaintiff and other
11 similarly situated employees subject to Labor Code Sections 226.7, 512, and the applicable IWC
12 Wage Order, including Wage Order 8.

13 42. Pursuant to Labor Code Sections 226.7 and 512, and the applicable IWC Wage
14 Orders, Plaintiff and other members of the Class were entitled to receive a duty-free meal period
15 of at least 30 minutes for each workday they worked more than 5 hours in one workday and a
16 second meal period after working 10 hours in one day. Under California law, requiring employees
17 to remain on the premises for their meal breaks constitutes an on-duty meal period and must be
18 paid. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. Plaintiff and other members
19 of the Class were entitled to an additional hour of pay for each day a legally complaint meal period
20 was not provided.

21 43. As alleged above, Defendant required that Plaintiff and other members of the Class
22 remain on company premises during meal periods, thereby constituting on-duty meal periods.

23 44. Defendant failed to compensate Plaintiff and other members of the Class for the
24 on-duty meal periods. Additionally, Defendant failed to pay Plaintiff and other members of the
25 Class meal period premiums when off-duty meal periods were not provided.

26 45. Based on the conduct alleged herein, pursuant to Labor Code Section 226.7 and the
27 applicable Wage Orders, Plaintiff and other members of the Class are entitled, and therefore seek,
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1 the recovery of (1) all wages for the time spent taking on-duty meal periods and (2) all meal period
2 premium wages from Defendant in an amount equal to one hour of wages per non-compliant meal
3 period in a sum to be proven at trial.

4 46. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
5 Class have suffered damages in an amount, subject to proof, to the extent they were not paid for
6 on-duty meal periods and to the extent they were not paid all premiums owed for meal period
7 violations. Plaintiff is informed and believes and based thereon alleges that Defendant's willful
8 failure to provide Plaintiff and other members of the Class the wages due and owing to them upon
9 separation from employment results in continued payment of wages up to thirty (30) days from
10 the time the wages were due. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a),
11 Plaintiff and other members of the Class are entitled to recover prejudgment interest on the wages
12 owed to them for on-duty meal periods and on additional pay owed for meal period violations.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

15 **(By Plaintiff and the Wage Statement Subclass against Defendant)**

16 47. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
17 though set forth herein.

18 48. Section 226(a) of the California Labor Code requires Defendant to accurately report
19 total hours worked by Plaintiff and the members of the Wage Statement Class, and to accurately
20 set forth wages earned. Defendant has knowingly and intentionally failed to comply with Labor
21 Code section 226(a) on each and every wage statement provided to Plaintiff and members of the
22 Wage Statement Subclass by failing to accurately list all hours worked and all wages earned,
23 including the off the clock work, on-duty meal periods, minimum, overtime, and premium wages.

24 49. As a consequence of Defendant's knowing and intentional failure to comply with
25 Labor Code section 226(a), Plaintiff and each member of the Wage Statement Class he seeks to
26 represent are each entitled to actual damages or penalties not to exceed \$4,000 pursuant to Labor
27 Code section 226(b), together with interest thereon and attorneys' fees and costs.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES TIMELY UPON CESSATION OF EMPLOYMENT**

3 **(By Plaintiff and the Waiting Time Penalty Class against Defendant)**

4 50. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
5 though set forth herein.

6 51. Plaintiff and the other members of the Waiting time Penalty Subclass were
7 employees of Defendant covered by Labor Code Sections 201 or 202 whose employment with
8 Defendant ended during the relevant class period.

9 52. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other members of the
10 Waiting Time Penalty Subclass were entitled upon cessation of employment with Defendant to
11 timely payment of all wages earned and unpaid prior to termination. Discharged employees were
12 entitled to payment of all wages earned and unpaid prior to discharge immediately upon
13 termination. Employees who resigned were entitled to payment of all wages earned and unpaid
14 prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours
15 previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation
16 at the time of resignation.

17 53. As alleged above, Defendant failed to pay Plaintiff and other members of the
18 Waiting Time Penalty Subclass all wages earned and unpaid prior to termination, including all
19 minimum, overtime and premium wages owed at the time of the cessation of the employee-
20 employer relationship in accordance with Labor Code Section 201 or 202. Plaintiff is informed
21 and believes and thereon alleges that at all relevant times within the applicable limitations period,
22 Defendant maintained and continues to maintain a policy or practice of not paying terminated
23 employees all their final wages, including minimum and overtime wages and meal premium
24 wages, earned before termination due under Labor Code Section 201 or 202.

25 54. Defendant's failure to pay Plaintiff and members of the Waiting Time Penalty
26 Subclass all wages earned prior to termination, in accordance with Labor Code Sections 201 or
27 202, was willful. Defendant had the ability to pay all wages earned by employees prior to
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1 termination in accordance with Labor Code Sections 201 or 202, but intentionally adopted policies
2 or practices incompatible with the requirements of Labor Code Sections 201 or 202.

3 55. Pursuant to Labor Code Section 201 or 202, Plaintiff and other members of the
4 Waiting Time Penalty Subclass are entitled to all wages earned prior to termination that Defendant
5 failed to pay them.

6 56. Pursuant to Labor Code Section 203, Plaintiff and other members of the Waiting
7 Time Penalty Class are entitled to continuation of their wages, from the day their earned and unpaid
8 wages were due upon termination until paid, up to a maximum of 30 days.

9 57. As a result of Defendant's conduct, Plaintiff and other members of the Waiting
10 Time Penalty Class have suffered damages in an amount, subject to proof, to the extent they were
11 not paid for all wages earned prior to termination.

12 58. As a result of Defendant's conduct, Plaintiff and members of the Waiting Time
13 Penalty Class have suffered damages in an amount, subject to proof, to the extent they were not
14 paid all continuation wages owed under Labor Code Section 203.

15 59. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the
16 Waiting Time Penalty Subclass are entitled to recover the full amount of their unpaid wages,
17 continuation wages under Labor Code Section 203, reasonable attorney's fees and costs of suit.
18 Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members
19 of the Waiting Time Penalty Subclass are entitled to recover prejudgment interest on the amount
20 of their unpaid wages and unpaid continuation wages.

21 **FIFTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(By Plaintiff and the Class against Defendant)**

24 60. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
25 though set forth herein.

26 61. Defendant is a "person" as defined under Business and Professions Code § 17021.

27 62. Plaintiff alleges that Defendant committed the unfair business practices, as defined
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1 by Cal. Bus. & Prof. Code § 17200, et seq., by violating the laws alleged to have been violated in
2 this Complaint and which allegations are incorporated herein by reference as though set forth
3 herein, which allegations include, but are not limited to:

- 4 a. Failing to pay Plaintiff and Class Members all overtime wages due in
5 violation of state law;
- 6 b. Failing to pay Plaintiff and Class Members all minimum wages due in
7 violation of state law
- 8 c. Failing to provide meal periods to Plaintiff and Class Members consistent
9 with California law and paying all premium wages owed for such violations;
- 10 d. Failing to provide accurate wage statements consistent with California law;
- 11 e. Failing to pay final wages upon cessation of employment consistent with
12 California law;

13 63. As a result of Defendant's unfair competition as alleged herein, Plaintiff and other
14 members of the Class have suffered injury in fact and lost money or property. Plaintiff and
15 members of the Class have been deprived of their rights to minimum and overtime wages for all
16 hours worked; duty-free meal periods, premium wages, accurate wage statements, and/or timely
17 payment of all earned wages due upon termination of employment.

18 64. Pursuant to Business and Professions Code Section 17203, Plaintiff and other Class
19 Members are entitled to restitution of all wages and other monies owed and belonging to them,
20 including interest thereon, that Defendant wrongfully withheld from them and retained for
21 themselves by means of their unlawful and unfair business practices.

22 65. Plaintiff and Class Members are entitled to recover reasonable attorney's fees in
23 connection with their unfair competition claims pursuant to Code of Civil Procedure Section
24 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

1 **SIXTH CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER PAGA**

3 **(By Plaintiff, Aggrieved Employees and the State of California against Defendant)**

4 66. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
5 though set forth herein.

6 67. At all times relevant to this actions, Plaintiff and other Aggrieved Employees were
7 “Aggrieved Employees” within the meaning of Labor Code Section 2699.

8 68. Defendant’s conduct herein, arising from Defendant’s failure to pay minimum and
9 overtime wages for all hours worked under Labor Code Sections 510, 1194, and 1197, meal period
10 violations under Labor Code Sections 226.7 and 512, failure to provide legally compliant wage
11 statements under Labor Code Section 226, and failure to timely pay all wages upon cessation of
12 employment in violation of Labor Code Sections 201-203, gives rise to violations of PAGA.

13 69. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
14 of himself and other current or former employees, to bring a civil action to recover civil penalties
15 pursuant to the procedures specified in Labor Code Section 2699.3.

16 70. Plaintiff has complied with procedures for bringing suit specified in Labor Code
17 Section 2699.3. By letter dated June 30, 2023, Plaintiff gave written notice to the Labor and
18 Workforce Development Agency (LWDA) via its online filing system and via certified mail to
19 Defendant of the specific provisions of the Labor Code alleged to have been violated, including
20 the facts and theories to support the alleged violations. A true and correct copy of the June 30,
21 2023 letter is attached hereto as **Exhibit 1**. To date, more than 65 days after the postmark date of
22 June 30, 2023, the LDWA has not advised Plaintiff and other Aggrieved Employees that it intends
23 to investigate Plaintiff’s allegations.

24 71. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved
25 Employees are entitled to civil penalties for Defendant’s violations of the Labor Code and
26 applicable Wage Orders of the Industrial Wage Order Commission, including Wage Order 8-2001,
27 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the
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1 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties
3 recovered shall be distributed to the LDWA, and 25% shall be distributed to the aggrieved
4 employees.

5 72. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of
6 reasonable attorney's fees and costs in connection with his claims for civil penalties.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff on behalf of himself and all others similarly situated employees,
9 prays for relief and judgment against Defendant as follows:

10 **CLASS CERTIFICATION:**

- 11 1. An order that the action be certified as a class action;
12 2. An order that Plaintiff be certified as the representative of the Classes;
13 3. An order that counsel for Plaintiff be confirmed as Class counsel;

14 **ON THE FIRST CAUSE OF ACTION:**

- 15 1. Damages for unpaid overtime wages;
16 2. Damages for unpaid minimum wages;
17 3. Liquidated damages;
18 4. Prejudgment interest;

19 **ON THE SECOND CAUSE OF ACTION:**

- 20 1. Damages for unpaid on-duty meal period wages;
21 2. Damages for unpaid additional pay owed for non-compliant meal periods;
22 3. Prejudgment interest;

23 **ON THE THIRD CAUSE OF ACTION:**

- 24 1. Damages for inaccurate wage statements for each pay period;
25 2. Prejudgment interest;

26 **ON THE FOURTH CAUSE OF ACTION:**

- 27 1. Damages for unpaid wages earned prior to termination of employment;
28

2. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;

3. Prejudgment interest;

ON THE FIFTH CAUSE OF ACTION:

1. Restitution of all unpaid wages and other monies owed and belonging to the Class that Defendant unlawfully withheld from them and retained for itself;

2. Prejudgment interest;

ON THE SIXTH CAUSE OF ACTION

1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);

2. Costs;

3. Reasonable attorney's fees; and

4. Such other and further relief as this Court may deem just and proper.

ON ALL CAUSES OF ACTION:

1. Judgment in favor of Plaintiff and the putative Classes and against Defendant;

2. Reasonable attorney's fees;

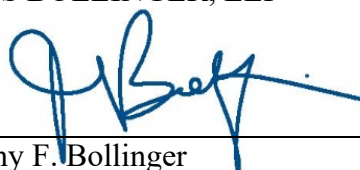
3. Costs of suit; and

4. Such other relief as the Court deems just and proper.

Dated: September 5, 2023

MOSS BOLLINGER, LLP

By:


Jeremy F. Bollinger
Attorneys for Plaintiff RAMON FELIX

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for himself and the Classes on all claims so triable.

Dated: September 5, 2023

MOSS BOLLINGER, LLP



By: _____

Jeremy F. Bollinger
Attorneys for Plaintiff RAMON FELIX