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Attorneys for Plaintiff Julio Asencio

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SANTA CRUZ**

9 **JULIO ASECIO,**

10 **Plaintiff,**

11 **vs.**

12 **FOG KIST OF SANTA CRUZ LLC;**
13 **LOUISE ANN VENINGA; and DOES 1 to**
14 **25, inclusive,**

15 **Defendants.**

CASE NO.: 24CV00614

COMPLAINT FOR DAMAGES FOR:

- 1) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) **FAILURE TO PAY MINIMUM WAGES;**
- 3) **FAILURE TO PAY OVERTIME;**
- 4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) **FAILURE TO PROVIDE REST BREAKS;**
- 8) **FAILURE TO PROVIDE MEAL BREAKS;**
- 9) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 10) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 11) **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

JURY TRIAL DEMANDED

COMES NOW Plaintiff, JULIO ASENCIO (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Cruz in this judicial district because Defendants FOG KIST OF SANTA CRUZ LLC.; LOUISE ANN VENINGA and DOES 1 to 25, inclusive (hereinafter collectively "FOG KIST" or "Defendant(s)") do business in the County of Santa Cruz, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Cruz is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Santa Cruz, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant FOG KIST OF SANTA CRUZ LLC is a California limited liability company, doing business in the County of Santa Cruz, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant LOUISE ANN VENINGA is a female resident of the State of California, and the owner, managing agent, and/or director FOG KIST OF SANTA CRUZ LLC. Defendant LOUISE ANN VENINGA is being included in this lawsuit pursuant to Labor Code Section 558.1 in that she was involved in the day-to-day operations of the business and, as such, controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants FOG KIST OF SANTA CRUZ LLC and LOUISE ANN VENINGA are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "FOG KIST".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
4 for the conduct alleged herein. Upon discovering the true names and capacities of these
5 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
6 capacities of these fictitiously named defendants.

7
8 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
9 that information and belief, alleges that at all times herein mentioned, each of the remaining
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
11 under the authority of their agency, employment, or representative capacity, with the consent of
12 his/her codefendants.

13 **GENERAL ALLEGATIONS**

14 7. Plaintiff started working for FOG KIST over 40 years ago as a maintenance man.
15 Plaintiff was seemingly misclassified as a salaried, exempt employee despite having
16 maintenance responsibilities that would not fit him into the executive, professional, or
17 administrative exemptions. Plaintiff's employment ended on or around June/July 2023.

18
19 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
20 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
21 Security Services USA, Inc., an onsite security provider. After about a year of employment,
22 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
23 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
24 termination of employment and weekly payment of wages to temporary employees. The trial
25 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
26 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
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1 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
2 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
3 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
4 PAGA representative to sue for violations that the representative has personally suffered. The
5 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
6 and others. The statute also states that an “aggrieved employee” is “any person who was
7 employed by the alleged violator and against whom one or more of the alleged violations was
8 committed.” Because at least one of the violations that Huff had alleged had affected him
9 personally, the Court of Appeal denied Securitas’ motion.
10

11 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
12 other employees, it allows for suits broader than the specific violations the named employee
13 experienced. Therefore, even if the employee did not personally experience the Labor Code
14 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
15 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
16 other employees, including ALL hourly, non-exempt employees, irrespective of job title or job
17 duties, as well as those employees who were misclassified as salaried, exempt employees but
18 should have been hourly employees, who worked for FOG KIST at any time during the
19 relevant PAGA period.
20

21 10. It is Plaintiff’s position that FOG KIST has violated the following Labor Code Sections
22 against Plaintiff and other aggrieved employees, who include all non-exempt, hourly employees
23 who worked for FOG KIST at their various locations in the State of California during the relevant
24 PAGA period.
25

26 11. FOG KIST violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to
27 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
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1 the statutory minimum wage for all hours worked and for “off the clock” work. This is so because
2 FOG KIST had a company policy wherein they would disproportionately round down the
3 number of hours worked, resulting in “time shaving” and further resulting in aggrieved
4 employees not being paid for all hours worked. Furthermore, and to the extent that Plaintiff and
5 others worked through their meal periods while “off the clock”, they were not compensated for
6 all hours worked, which would be akin to a minimum wage violation in that meal periods would
7 consistently get interrupted by work duties. In addition, due to Plaintiff being misclassified, he
8 was not paid for all hours worked because he was paid a salary, irrespective of the number of
9 hours worked. Moreover, even if Plaintiff was correctly classified, his salary does not come close
10 to meeting the “salary test” in California (less than \$4000 per month) and based on that factor
11 alone, Plaintiff will be deemed an hourly, non-exempt employee.
12

13 12. Pursuant to California Industrial Welfare Commission Order No. 4/7-2001, Section 9(B),
14 “When tools or equipment are required by the employer or are necessary to the performance of
15 a job, such tools and equipment shall be provided and maintained by the employer, except that
16 an employee whose wages are at least two (2) times the minimum wage provided herein may be
17 required to provide and maintain hand tools and equipment customarily required by the trade or
18 craft.” FOG KIST unequivocally required its employees, including maintenance personnel like
19 Plaintiff, to provide their own hand tools for the performance of their job duties. As such, FOG
20 KIST violated the aforementioned IWC Wage Order in that FOG KIST required its employees
21 including Plaintiff, to provide and maintain hand tools and equipment customarily required by
22 the trade but did NOT compensate these employees at least two (2) times the minimum wage at
23 all times.
24

25 13. Due to the above “off the clock” violations and due to the misclassification, FOG KIST
26 also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
27 overtime compensation, even though they worked more than 8 hours per day, 12 hours per day,
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1 and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved
2 employees' actual work hours entitled them to overtime compensation, however, FOG KIST did
3 not compensate its hourly, non-exempt employees with the correct amount of overtime due to
4 the "off the clock" work and time shaving as described above. Furthermore, FOG KIST failed
5 to include bonuses/incentive payments in calculating employees' regular rate of pay for use in
6 deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments
7 were also not factored into employees' regular rate for purposes of receiving meal and rest break
8 premiums per the Ferra v. Loews case.

10 14. FOG KIST also violated Labor Code § 226.7 and the appropriate Industrial Welfare
11 Commission Wage Order no. 4/7 because it failed to provide Plaintiff and other similarly situated
12 aggrieved employees with timely 10-minute rest periods for every four hours of work, or
13 majority portion thereof, throughout their employment. FOG KIST did not completely relieve
14 Plaintiff and others of all duty during said rest periods. FOG KIST did not pay to Plaintiff and
15 others one additional hour of pay at Plaintiff's regular rate of compensation for each workday
16 that one or more statutory rest periods was not provided or was interrupted. It was not part of the
17 company policy for employees such as Plaintiff to take at least two rest breaks per shift. In fact,
18 Plaintiff and others did not take any rest breaks at all. The concept of rest breaks was not
19 implemented as it was not company policy. Moreover, it would not have been possible for
20 employees such as Plaintiff to take such rest breaks due to being understaffed and due to a heavy
21 workload. As such, the culture as well as the policies and procedures of FOG KIST did not lend
22 itself to the employees receiving consistent statutory rest breaks wherein they were relieved of
23 all work duties. The environment at FOG KIST was not conducive to receiving multiple statutory
24 rest breaks under California law and timely, statutory rest breaks were not authorized or
25 enforced.

1 15. FOG KIST violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
2 Commission Wage Order no. 4/7 because it failed to provide hourly, non-exempt employees,
3 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
4 (5) hours of work throughout their employment. FOG KIST did not completely relieve Plaintiff
5 and other employees of all duty during said meal periods. FOG KIST did not pay to Plaintiff
6 and its hourly, non-exempt employees one additional hour of pay at their regular rate of
7 compensation for each workday that one or more statutory meal periods was not provided.
8 Plaintiff and the hourly, non-exempt employees would not always receive meal periods before
9 the 5th hour worked that were actually uninterrupted. The latter was due to the workload and due
10 to being in a fast-paced work environment. Consequently, it was the normal practice and custom
11 of FOG KIST not to authorize, permit, and enforce timely, uninterrupted, statutory meal periods.
12 If FOG KIST had Plaintiff sign a meal period waiver, it would not be valid and enforceable since
13 Plaintiff and others generally worked more than a 6-hour shift. If FOG KIST had Plaintiff sign
14 an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
15 would be invalid and unenforceable because the nature of Plaintiff's job does not and did not
16 prevent him from taking a meal period and the company could have hired "breakers" to relieve
17 Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal period.
18 Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such
19 an agreement even if it was signed. As such, Plaintiff and others did not always receive statutory,
20 timely meal periods during their employment. To the extent that FOG KIST argues that
21 employees receive meal break premium pay for missed meal periods, that argument is
22 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
23 themselves, irrespective of whether an employee received the premium payment for a missed,
24 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
25 "section 226.7 does not give employers a lawful choice between providing *either* meal and rest
26 breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
27 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
28 violation; the employer has still committed a violation even if the remedy for the violation has

1 been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
2 such, the work environment and culture at FOG KIST was not conducive to receiving consistent,
3 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
4 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
5 incentive payments as well as overtime compensation.

6 16. Furthermore, during the relevant time period, and due to the above labor code violations,
7 FOG KIST failed to pay Plaintiff and other similarly situated aggrieved employees all wages due
8 to them within any time period specified by California Labor Code section 204. FOG KIST was
9 also in violation of California Labor Code section 226(a) by failing to include pertinent
10 information on the wage statements, including but not limited to, the correct hourly rate, all hours
11 worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned,
12 premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay
13 period, all employee identifying information, the correct and complete name and address of the
14 legal employer, and reimbursement for business expenses, among others. As such, FOG KIST
15 did not provide Plaintiff and other similarly situated aggrieved employees with complete,
16 accurate itemized wage statements.

17
18 17. During the relevant time period, FOG KIST also failed to keep accurate and complete
19 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
20 others pursuant to California Labor Code sections 1174(d).

21 18. FOG KIST also violated Labor Code § 203 because it willfully failed to pay other
22 similarly situated aggrieved employees earned and due wages upon separation of employment,
23 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
24 but unpaid wages include compensation for all hours worked, including minimum wages,
25 overtime compensation, and premium pay for missed meal and rest breaks.

26
27 19. During the relevant time period, Plaintiff and other aggrieved employees incurred
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1 necessary, business-related expenses and costs that were not reimbursed by FOG KIST. These
2 costs include, but are not limited to, use of personal cell phones for work purposes, use of
3 personal vehicle for work purposes, and use of personal hand tools for work purposes, including
4 saws, drills, gardening tools, trimming tools, etc. Accordingly, FOG KIST was in violation of
5 California Labor Code sections 2800 and 2802.

6 20. Furthermore, Plaintiff alleges that Defendants have also violated Labor Code Section
7 558 and have engaged in business practices which violate Business and Professions Code
8 Section 17200.

9 21. Each of the aforementioned violations, except the violations for inaccurate pay
10 statements under Labor Code section 226(a), are among the enumerated serious violations set
11 forth in Labor Code § 2699.5, for which there is no statutory right to cure under the PAGA
12 cause of action.
13

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

16 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
17 **Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)**

18 **(Plaintiff against all named defendants and all DOE defendants)**
19

20 22. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

22 23. At all times relevant herein, Defendants were required to compensate its employees for
23 all hours worked upon reporting for work at the appointed time stated by the employer
24 pursuant to Industrial Welfare Commission Order 4-2001/7-2001, California Code of
25 Regulations, Title 8, Section 11040/11070.
26

27 24. For the three (3) years preceding filing of this action, Defendants failed to compensate
28

1 Plaintiff for all hours worked.

2 25. Under the aforementioned wage order and regulations, Plaintiff is to recover
3 compensation for all hours worked but not paid by Defendants for the three (3) years
4 preceding the filing of this Complaint.

5 26. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
6 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
7 this Court.

8
9 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
10 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
11 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
12 reasonable attorney's fees and costs of suit.

13 28. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
15 amount known to Plaintiff once he has obtained all of his payroll records from
16 Defendants.
17

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

20 **(California Labor Code Sections 1194, 1194.2, 1197)**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 29. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 28, inclusive, of this Complaint as though fully set forth herein.
24

25 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
26 to suffer or permit a California employee to work without paying wages at the minimum wage
27 rate for all hours worked as required by the applicable Industrial Welfare Commission
28

1 (hereinafter "IWC") Wage Order No. 4-2001/7-2001, codified at California Code of
2 Regulations, Title 8, Section 11040/11070, subdivision 4.

3 31. Pursuant to IWC Wage Order no. 4-2001/7-2001, subdivision 2(K)/(H), at all relevant
4 times, "hours worked" included "the time during which an employee is subject to the control of
5 an employer, and includes all the time the employee is suffered or permitted to work, whether
6 or not required to do so..."

7 32. During his employment, Plaintiff was regularly required as a matter of uniform
8 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
9 was paid less than the minimum wage rate by Defendants for hours worked in violation of
10 California Labor Code Section 1197 and the applicable California Industrial Wage
11 Commission wage order(s).
12

13 33. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
14 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
15 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
16 to believe that their acts or omissions were not contrary to California law.
17

18 34. For all hours worked by Plaintiff for which he was paid less than the minimum wage
19 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
20 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
21 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
22 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.
23

24 35. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial.

27 **THIRD CAUSE OF ACTION**
28

FAILURE TO PAY OVERTIME

(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of Regulations Title 8 Section 11040/11070; California Labor Code Section 510)

(Plaintiff against all named defendants and all DOE defendants)

36. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 35, inclusive, of this Complaint as though fully set forth herein.

37. Pursuant to Industrial Welfare Commission Order No. 4-2001/7-2001, Cal. Code of Regs., Title 8, Section 11040/11070, for the period of Plaintiff's employment, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

38. Plaintiff was a non-exempt employee entitled to the protections of the California Industrial Welfare Commission Order No. 4-2001/7-2001, California Code of Regulations, Title 8, Section 11040/11070.

39. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a single workday or forty (40) hours in a single workweek on numerous occasions.

40. Plaintiff was entitled to the above overtime premiums.

41. Defendants did not pay Plaintiff premium wages of at least one and one-half times Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past twelve (12) in a day.

42. Defendants did not pay Plaintiff premium wages of at least one and one-half times

1 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

2 43. Plaintiff worked at least one pay period in which he was not properly paid overtime
3 within the three (3) years prior to the initiation of this lawsuit.

4 44. Defendants know or should know the actual dates of overtime worked, the amount of
5 overtime worked, and the amount of unpaid overtime due.

6 45. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
7 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
8 Court.
9

10 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
11 Regulations, Title 8, Sections 11040/11070, Plaintiff is entitled to recover damages for the
12 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
13 reasonable attorney's fees and costs of suit.

14 47. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial.
17

18 **FOURTH CAUSE OF ACTION**

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

20 **(California Labor Code Section 226)**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.
24

25 49. Pursuant to California Labor Code Section 226, every employer must furnish each
26 employee an itemized statement of wages and deductions at the time of payment of wages.

27 50. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
28

1 accurately reflected all information required by Labor Code Section 226, including but not
2 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
3 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
4 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
5 statements to Plaintiff in accordance with California Labor Code Section 226(a).

6 51. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
7 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
8 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
9 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
10 reasonable attorney's fees.

12 52. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
13 sustained damages, including loss of earnings, in an amount to be established at trial. As a
14 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
15 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
16 and attorney's fees pursuant to statute.

18 53. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
20 trial.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

23 **(California Labor Code Section 204)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 54. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.
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1 55. California Labor Code Section 204 establishes the fundamental right of all employees
2 in the State of California to be paid wages in a timely fashion for their work.

3 56. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
4 full amount of all owed wages when due as required by California Labor Code Section 204.

5 57. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
6 informed, believes, and thereon alleges, that all times relevant during the liability period,
7 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
8 including overtime hours, the minimum wage, and premium pay for missed meal and rest
9 breaks.
10

11 58. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
12 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
13 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
14 from Defendants' records or indirectly based on information from Defendants' records.
15

16 59. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

21 **(California Labor Code Sections 201, 203)**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23
24 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein.

26 61. Pursuant to California Labor Code Section 201(a), an employer who discharges an
27 employee must immediately pay for all compensation due and owing.
28

1 62. Pursuant to California Labor Code Section 202, when an employee resigns, the
2 employer must pay all compensation due and owing within 72 hours of resignation, or on the
3 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

4 63. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
5 without abatement or reduction, any wages of an employee whose employment ends, the wages
6 of the employee shall continue as a penalty from the due date at the same rate until paid or until
7 an action is commenced; however, the wages shall not continue for more than 30 days for
8 failure to pay an employee owed wages.
9

10 64. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
11 continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

12 65. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
14 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
15 preceding the filing of this lawsuit.
16

17 66. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
18 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
19 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

20 67. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
22 trial.
23

24 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO GIVE REST BREAKS**

26 **(Plaintiff against all named defendants and all DOE defendants)**

27 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
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1 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

2 69. Plaintiff brings this cause of action under the following laws, for the following reasons:

3 a. Title 8 of the California Code of Regulations Sections 11040/11070(12)(A), which
4 provides that every employer shall authorize and permit all employees to take rest
5 periods, which insofar as practicable shall be in the middle of each work period.

6 The authorized rest period time shall be based on the total hours worked daily at the
7 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

8 b. Title 8 of the California Code of Regulations Sections 11040/11070(12)(B), which
9 provides that if an employer fails to provide an employee a rest period in
10 accordance with the applicable provisions of this order, the employer shall pay the
11 employee one (1) hour of pay at employee's regular rate of compensation for each
12 workday that the rest period is not provided;

13 c. Title 8 of the California Code of Regulations sections 11040/11070(20)(A), which
14 penalizes the employer \$50.00 for each initial violation, per employee, of any
15 provision of the Wage Order, and \$100.00 for each additional violation thereafter
16 per employee; and

17 d. California Labor Code section 226.7, which states that (a) no employer shall require
18 any employee to work during any rest period mandated by an applicable order of
19 the Industrial Welfare Commission, and (b) if an employer fails to provide an
20 employee a rest period in accordance with an applicable order of the Industrial
21 Welfare Commission, the employer shall pay the employee one (1) additional hour
22 of pay at employee's regular rate of compensation for each work day that the rest
23 period is not provided.

24 70. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
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26
27
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1 rest break after every four (4) hours of work or major fraction thereof, as required by California
2 law.

3 71. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
4 regulations, and wage orders alleged in this cause of action along with any allowable interest,
5 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
6 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

7 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

9 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.
12

13 **EIGHTH CAUSE OF ACTION**

14 **FAILURE TO GIVE MEAL BREAKS**

15 **(Plaintiff against all named defendants and all DOE defendants)**

16 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.
18

19 75. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 20 a. California Labor Code section 512(a), which requires that employees be given a 30-
21 minute uninterrupted meal break after five (5) hours of work, and a second
22 uninterrupted meal break after ten (10) hours of work;
23
24 b. California Labor Code section 226.7, which states that (a) no employer shall require
25 any employee to work during any meal period mandated by an applicable order of
26 the Industrial Welfare Commission, and (b) if any employer fails to provide an
27 employee a meal period in accordance with an applicable order of the Industrial
28

1 Welfare Commission, the employer shall pay the employee one (1) additional hour
2 of pay at the employee's regular rate of compensation for each workday that the
3 meal period is not provided;

4 c. California Industrial Welfare Commission Order No. 4/7 section 11(B), as codified
5 under Title 8 of the California Code of Regulations Section 11040/11070, which
6 states that if an employer fails to provide an employee a meal period in accordance
7 with the applicable provisions of the Wage Order, the employer shall pay the
8 employee one (1) hour of pay at the employee's regular rate of compensation for
9 each workday that the meal period is not provided;
10

11 d. California Industrial Welfare Commission Wage Order No. 4/7 Section 7(A)(3), as
12 codified under Title 8 of the California Code of Regulations Section 11040/11070,
13 which requires an employer to maintain records documenting its employees' meal
14 periods;
15

16 e. California Industrial Welfare Commission wage order No. 4/7 Section 20(A), as
17 codified under California Code of Regulations Section 11040/11070, which
18 penalizes the employer \$50.00 for each initial violation, per employee, of any
19 provision of the Wage Order, and \$100.00 for each additional violation thereafter
20 per employee; and
21

22 f. California Labor Code section 1171 and 1173, which have given the California
23 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4
24 and 7) as enforceable law.

25 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
26 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
27 take a second relieved meal break after ten (10) hours of work, as required by California law.
28

1 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
2 4/7, as codified under California Code of Regulations Sections 11040/11070 et. seq. requires
3 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
4 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
5 work duty. California Labor Code section 226.7 provides that employers may not require their
6 employees to work through their meal periods. California Labor Code section 226.7 and
7 California Code of Regulations section 11040/11070 requires that if the employer fails to
8 provide the employee with an uninterrupted meal period, the employer must pay the employee
9 one (1) hour of pay for each work day that the meal period is not given.
10

11 77. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
12 regulations, and wage orders alleged in this cause of action along with any allowable interest,
13 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
14 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
15

16 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
17 fees as well as interest under Labor Code section 218.6.

18 79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
20 trial.

21 **NINTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

23 **(Plaintiff against All Named Defendants and all DOE defendants)**

24 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.
26

27 81. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
28

1 employee for all necessary expenditures or losses incurred by the employee in direct
2 consequence of the discharge of his or her duties.”

3 82. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
4 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
5 of completing his job duties, which were not reimbursed by Defendant. These expenses
6 include, but are not limited to, use of personal cell phones for work purposes, use of personal
7 vehicle for work purposes, and use of personal hand tools for work purposes, including saws,
8 drills, gardening tools, trimming tools, etc.
9

10 83. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
11 and attorney’s fees and costs, under Labor Code section 2802.

12 **TENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
15 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194,**
1194.2, 1197, 1197.1, 1198, 2800, 2802)

16 **(Plaintiff against All Named Defendants and all DOE defendants)**

17 84. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 83, inclusive, of this Complaint as though fully set forth herein.

19 85. Plaintiff has complied with the procedures for bringing suit specified in California
20 Labor Code § 2699.3.

21 86. By letter dated June 30, 2023, Plaintiff gave written notice by certified mail to the Labor
22 and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of
23 the California Labor Code alleged to have been violated, including the facts and theories to
24 support the alleged violations.

25 87. Pursuant to California Labor code section 2699.3, no response was received from
26 the LWDA within 65 days of the postmark date of the above-alleged letter.

27 88. Plaintiff therefore has exhausted all administrative remedies required of him under
28

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
2 cause of action and pursue penalties in a representative action for Defendants' violations of the
3 Labor Code.

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

10 90. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
11 violator and had one or more of the alleged violations committed against her, and therefore is
12 properly suited to represent the interests of other current and former employees, including all
13 current and former hourly, non-exempt employees who worked for FOG KIST at all locations
14 in the State of California during the applicable PAGA Period.

15 91. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
16 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
17 numerous provisions of the California Labor Code as alleged in this Complaint.

18 92. Plaintiff therefore has exhausted all administrative remedies required of him under
19 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
20 this cause of action and pursue penalties in a representative action for Defendants' violations of
21 the Labor Code.

22 93. California Labor Code section 2699 et seq. imposes penalties upon culpable
23 Defendants for violating the Labor Code.

24 94. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
25 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
26 seeking individual penalties/victim specific relief or underpaid wages for himself or other
27 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
28 this Complaint for individual wages but is not seeking wages through the PAGA action.

95. Specifically, Plaintiff seeks penalties under California Labor Code

1 section 2699, for the following:

2 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
3 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
4 2802), and any other Labor Codes/Industrial Welfare Commission Order (No. 4/7) violated
5 based on the facts alleged in this Complaint.

6 96. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
7 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
8 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional
9 limits of this Court.

10 **ELEVENTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

12 **(California Business and Professions Code Section 17200)**

13 **(Plaintiff against Defendant FOG KIST OF SANTA CRUZ LLC only and all DOE**
14 **defendants)**

15
16 97. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 96, inclusive, of this Complaint as though fully set forth herein.

18 98. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
19 constitute unfair and unlawful business practices under California Business and Professions
20 Code Section 17200, et seq.

21
22 99. Defendant's violations of the California labor laws and the Labor Code constitutes a
23 business practice because it was done repeatedly over a significant period of time in a
24 systematic manner that was detrimental to Plaintiff and other employees.

25 100. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
26 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
27 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
28

1 seq.

2 101. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
3 multiple damages as specifically provided in California Business and Professions Code section
4 17200 et seq.
5

6 102. For the four years preceding the filing of this action, Plaintiff has suffered damages
7 and request damages and/or restitution of all monies and profits to be disgorged from
8 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
9 this Court.
10

11 **PRAYER FOR RELIEF**

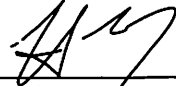
12 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
13 follows:
14

- 15 1. For compensatory damages including lost past and future wages, overtime,
16 commissions, and all other sums of money, including employment benefits, together
17 with interest on said amounts, and any other economic injury to Plaintiff, according to
18 proof;
- 19 2. For special and consequential damages to the extent allowed by law;
- 20 3. For restitution and disgorgement for all unfair business practices by corporate
21 Defendants against Plaintiff in an amount according to proof;
- 22 4. For an order enjoining corporate Defendants from further unfair and unlawful business
23 practices in violation of Business and Professions Code section 17200, et seq.;
- 24 5. For damages and penalties against Defendants under Labor Code sections
25 203, 204, and 226 for Plaintiff in an amount subject to proof at trial;
- 26 6. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
27 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
- 28 7. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half

- 1 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
- 2 8. For maximum civil penalties available under the Labor Code and applicable Wage Order
- 3 against Defendant as described more particularly in the Complaint and Representative
- 4 PAGA claim/action;
- 5 9. For all remedies available to Plaintiff under the applicable Wage Order and the
- 6 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 7 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 8 to the extent permitted by law;
- 9 10. For the imposition of civil penalties and/or statutory penalties;
- 10 11. Reasonable attorney's fees where available by law, including but not limited to,
- 11 pursuant to the California Labor Code, including section 2698, and/or other
- 12 applicable laws; and
- 13 12. Costs and expenses of suit incurred herein;
- 14 13. For all interest as allowed by law;
- 15 14. For such other and further relief as the Court deems just and proper.

16 DATED: February 29, 2024

MESSRELIAN LAW INC.

17 By 
18 Harout Messrelian, Esq.
19 Attorneys for Plaintiff Julio Asencio

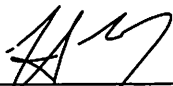
20
21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

23

24 DATED: February 29, 2024

MESSRELIAN LAW INC.

25 By 
26 Harout Messrelian, Esq.
27 Attorneys for Plaintiff Julio Asencio

28