

**MELMED LAW GROUP P.C.**  
Jonathan Melmed (SBN 290218)  
jm@melmedlaw.com  
Laura Supanich (SBN 314805)  
lms@melmedlaw.com  
Hannah Becker (SBN 345452)  
hb@melmedlaw.com  
1801 Century Park East, Suite 850  
Los Angeles, California 90067  
Phone: (310) 824-3828  
Fax: (310) 862-6851

**ELECTRONICALLY FILED**  
Superior Court of California  
County of Alameda  
11/19/2024

Chad Finke, Executive Officer / Clerk of the Court  
By: D. Drew Deputy

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

MANUEL ROSILLO, an individual, on behalf  
of himself, the State of California, as a private  
attorney general, and on behalf of all others  
similarly situated,

Plaintiff,

v.

PACIFIC AGRI-PRODUCTS, INC., a  
California Corporation; and DOES 1 TO 50,

Defendants.

Case Number: 23CV036593

**Second Amended Class and Representative  
Action Complaint For:**

1. Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") for Willful Misclassification in Violation of Labor Code sections 226.8 and 2775,
2. Failure to Pay All Minimum Wages,
3. Failure to Pay All Overtime Wages,
4. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
5. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
6. Failure to Maintain Accurate Employment Records,
7. Failure to Pay Wages Timely during Employment,
8. Failure to Pay All Wages Earned and Unpaid at Separation,

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
9. Failure to Indemnify All Necessary Business Expenditures,
  10. Failure to Furnish Accurate Itemized Wage Statements,
  11. Violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and
  12. Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code.

**Demand for Jury Trial**

1 Plaintiff Manuel Rosillo (“Plaintiff”), on behalf of himself, the State of California, as a private  
2 attorney general, and all other similarly situated employees within the State of California, complains  
3 and alleges of defendants Pacific Agri-Products, Inc. and Does 1 to 50 (collectively, “Defendants”),  
4 and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure  
7 section 382.

8 2. The “Class Period” as used herein, is defined as the period from June 22, 2019, and  
9 continuing into the present and ongoing. Defendants’ violations of California’s laws as described more  
10 fully below have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiff brings this class action on behalf of himself and the following class: *All*  
12 *individuals who are or were employed by Defendants as lumpers in California during the Class Period*  
13 (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiff brings this action on behalf of himself and the Class Members, as a class action,  
15 against Defendants for:

- 16 A. Failure to pay all minimum wages,
- 17 B. Failure to pay all overtime wages,
- 18 C. Failure to provide rest periods and pay missed rest period premiums,
- 19 D. Failure to provide meal periods and pay missed meal period premiums,
- 20 E. Failure to maintain accurate employment records,
- 21 F. Failure to pay wages timely during employment,
- 22 G. Failure to pay all wages earned and unpaid at separation,
- 23 H. Failure to indemnify all necessary business expenditures,
- 24 I. Failure to furnish accurate itemized wage statements,
- 25 J. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.  
26 Code, §§ 17200–17210).

1           5.       This action is also a representative action brought pursuant to the California Labor Code  
2 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698  
3 through 2699.6.

4           6.       The “PAGA Period” as used herein, is defined as the period from June 23, 2022, and  
5 continuing into the present and ongoing.

6           7.       This PAGA action is brought on behalf of Plaintiff, the State of California as private  
7 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*  
8 *employed by Defendants as lumpers in California during the PAGA Period* (the “Aggrieved  
9 Employees”).

10          8.       Plaintiff is informed and believes and thereon alleges that the California Industrial  
11 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders  
12 1-2001, 4-2001, 8-2001, and/or 13-2001 (the “Applicable Wage Orders”) and possibly others that may  
13 be applicable. (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130.) Plaintiff reserves the right  
14 to amend or modify the definition of “Applicable Wage Orders” with greater specificity or add  
15 additional IWC Wage Orders if additional applicable wage orders are discovered in litigation.

16       **II.    JURISDICTION & VENUE**

17          9.       This Court has subject matter jurisdiction over all causes of action asserted herein  
18 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section  
19 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds  
20 \$25,000, and because each cause of action asserted arises under the laws of the State of California or  
21 is subject to adjudication in the courts of the State of California.

22          10.       This Court has personal jurisdiction over Defendants because Defendants have caused  
23 injuries in the County of Alameda and the State of California through their acts, and by their violation  
24 of the California Labor Code and California state common law. Defendants transact millions of dollars  
25 of business within the State of California. Defendants own, maintain offices, transact business, have an  
26 agent or agents within the County of Alameda, and/or otherwise are found within the County of  
27 Alameda, and Defendants are within the jurisdiction of this Court for purposes of service of process.  
28

1           11.     Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the  
2 Code of Civil Procedure. Defendants operate within California and do business within Alameda  
3 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of  
4 Defendants' employees identified above within Alameda County and surrounding counties where  
5 Defendants may remotely operate.

6           12.     This matter is not appropriate for removal under the Class Action Fairness Act (28  
7 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in  
8 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of  
9 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not  
10 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.  
11 (28 U.S.C. § 1332, subd. (d)(4)(A).)

12 **III.    THE PARTIES**

13 **A.     PLAINTIFF**

14           13.     At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen  
15 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly  
16 employee in the County of Alameda.

17           14.     Plaintiff brings this action on behalf of himself and the following class pursuant to  
18 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*  
19 *Defendants as lumpers in California during the Class Period* (the "Class Members").

20           15.     Plaintiff also brings this action on behalf of himself and the State of California, as a  
21 private attorney general, and on behalf of the following group of aggrieved employees: *All individuals*  
22 *who are or were employed by Defendants as lumpers in California during the PAGA Period* (the  
23 "Aggrieved Employees").

24           16.     The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or  
25 were employees of Defendants during the relevant statutory period.

26 **B.     DEFENDANTS**

27           17.     Plaintiff is informed and believes and thereon alleges that Defendants were authorized  
28 to and doing business in Alameda County and is and/or was the legal employer of Plaintiff, the other

1 Aggrieved Employees, and the other Class Members during the applicable statutory periods. Plaintiff,  
2 the other Aggrieved Employees, and the other Class Members were, and are, subject to Defendants'  
3 policies and/or practices complained of herein and have been deprived of the rights guaranteed to them  
4 by: California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 1174,  
5 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2775, 2802, 2804, and others that may be  
6 applicable; California Business and Professions Code sections 17200 through 17210 ("UCL"); and the  
7 Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130).

8 18. Plaintiff is informed and believes, and based thereon alleges, that during the Class  
9 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,  
10 County of Alameda. Defendants' operations are headquartered in Alameda County.

11 19. Plaintiff does not know the true names or capacities, whether individual, partner, or  
12 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants  
13 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this  
14 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and  
15 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were  
16 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,  
17 the other Aggrieved Employees, and the other Class Members to be subject to the unlawful employment  
18 practices, wrongs, injuries, and damages complained of herein.

19 20. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
20 herein, Defendants were and/or are the employers of Plaintiff, the other Aggrieved Employees, and the  
21 other Class Members. At all times herein mentioned, each of said Defendants participated in the doing  
22 of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the  
23 Defendants, and each of them, were the agents, representatives, and employees of each and every one  
24 of the other Defendants, and at all times herein mentioned were acting within the course and scope of  
25 said agency, representation, and employment. Defendants, and each of them, approved of, condoned,  
26 or otherwise ratified every one of the acts or omissions complained of herein.

27 21. Plaintiff is further informed, and believes, and thereon alleges, that at all times  
28 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there

1 existed and now exists a unity of interest and ownership between them such that the individuality and  
2 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,  
3 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere  
4 shells and naked frameworks that their principal uses for the conduct of that Defendant's own business,  
5 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their  
6 identities as the entities responsible for their ownership, management, and financial interests.

7 22. Plaintiff is further informed, and believes, and thereon alleges, that at all times  
8 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,  
9 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said  
10 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and  
11 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the other  
12 Aggrieved Employees, and the other Class Members.

#### 13 **IV. COMMON FACTS & ALLEGATIONS**

14 23. Plaintiff and the other Class Members (collectively, the "Class Members") are, and were  
15 at all relevant times, employed by the Defendants within the State of California.

16 24. Likewise, Plaintiff and the other Aggrieved Employees (collectively, the "Aggrieved  
17 Employees") are, and were at all relevant times, employed by the Defendants within the State of  
18 California.

19 25. The Class Members and the Aggrieved Employees are, and were, at all relevant times,  
20 non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and  
21 the other claims alleged in this complaint.

22 26. Specifically, Plaintiff was employed by Defendants within the statutory Class Period  
23 and PAGA Period, working as an hourly, non-exempt lump sum for Defendants.

##### 24 **A. WILLFUL MISCLASSIFICATION**

25 27. Labor Code section 2775, subdivision (b), provides the test for determining whether an  
26 individual performing work for another is an independent contractor or an employee. It states as  
27 follows:  
28

1 “[A] person providing labor or services for remuneration shall be considered an  
2 employee rather than an independent contractor unless the hiring entity  
3 demonstrates that all of the following conditions are satisfied:

4 “(A) The person is free from the control and direction of the hiring entity in  
5 connection with the performance of the work, both under the contract for  
6 the performance of the work and in fact.

7 “(B) The person performs work that is outside the usual course of the hiring  
8 entity’s business.

9 “(C) The person is customarily engaged in an independently established trade,  
10 occupation, or business of the same nature as that involved in the work  
11 performed.”

12 28. This standard is commonly referred to as the “ABC Test.” Under the ABC Test, the  
13 alleged employer, rather than the worker, has the burden of establishing that the worker is an  
14 independent contractor and not intended to be included within the relevant wage orders’ coverage. “The  
15 focus is not on the label attached to a worker’s position, but on how that individual’s job may  
16 reasonably be viewed.” (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1154–  
17 1155.) Further, the alleged employer must establish that the worker meets **all three** factors of the ABC  
18 Test or falls within an exception to the ABC Test. (*Id.* at p. 1154 [“The ABC test is conjunctive, and  
19 the hiring entity’s failure to establish *any* of the following three factors precludes a finding that the  
20 worker is an independent contractor . . . .”].) Otherwise, Labor Code section 2775’s default  
21 presumption applies and the worker must be treated as an employee. (See *Dynamex Operations W. v.*  
22 *Superior Court* (2018) 4 Cal.5th 903, 955 [“The ABC test presumptively considers all workers to be  
23 employees, and permits workers to be classified as independent contractors only if the hiring business  
24 demonstrates that the worker in question satisfies each of three conditions . . . .”].)

25 29. Here, at all times during the Class Period and PAGA Period, Defendants treated the  
26 Class Members and the Aggrieved Employees as independent contractors despite the fact that  
27 Defendants failed to meet any of the prongs of the ABC Test, let alone all three. First, Defendants  
28 retained the right to control the manner and method of how the Class Members and the Aggrieved

1 Employees performed their job duties, and Defendants retained all necessary control over the Class  
2 Members and the Aggrieved Employees during their employment. Among other things, the Class  
3 Members and the Aggrieved Employees were required to follow detailed requirements imposed by  
4 Defendants governing the performance of their job. Further, Defendants set their compensation.

5         30.       Second, the job duties performed by the Class Members and the Aggrieved Employees  
6 fell within Defendants’ usual course of business. Specifically, the roles performed by the Class  
7 Members and the Aggrieved Employees are clearly comparable to those of Defendants’ employees  
8 whose services are provided within the usual course of Defendants’ business. Thus, the work of the  
9 Class Members and the Aggrieved Employees was not merely incidental to Defendants’ business, but  
10 rather, was an integral and ordinary part of that business.

11         31.       Finally, the Class Members and the Aggrieved Employees were not engaged in an  
12 independently established trade, occupation, or business of the same nature as the work performed for  
13 Defendants. The Class Members and the Aggrieved Employees did not, for example, take any of the  
14 usual steps to establish and promote their businesses. Nor did the Class Members and the Aggrieved  
15 Employees—through incorporation, licensure, advertisements, or routine offerings to provide services  
16 to the public or to a number of potential customers—independently choose the burdens and benefits of  
17 self-employment by engaging in an independently established trade, occupation, or business. Critically,  
18 this last prong of the ABC Test requires that Defendants show the Class Members and the Aggrieved  
19 Employees “*actually . . . engaged in an independent business, not merely that [they] could be.*”  
20 (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1155, emphasis in original.) That  
21 simply did not happen here: the Class Members and the Aggrieved Employees did not *actually engage*  
22 in independent businesses. “A company that labels as independent contractors a class of workers who  
23 are not engaged in an independently established business in order to enable the company to obtain the  
24 economic advantages that flow from avoiding the financial obligations that a wage order imposes on  
25 employers unquestionably violates the fundamental purposes of the wage order.” (*Dynamex*  
26 *Operations W. v. Superior Court* (2018) 4 Cal.5th 903, 962.) Here, Defendants violated California law  
27 by attempting to do so.

28         32.       Labor Code section 226.8 provides, in pertinent part, as follows:

1 “(a) It is unlawful for any person or employer to engage in any of the following  
2 activities:

3 “(1) Willful misclassification of an individual as an independent contractor.

4 “(2) Charging an individual who has been willfully misclassified as an  
5 independent contractor a fee, or making any deductions from  
6 compensation, for any purpose, including for goods, materials, space  
7 rental, services, government licenses, repairs, equipment maintenance,  
8 or fines arising from the individual's employment where any of the acts  
9 described in this paragraph would have violated the law if the individual  
10 had not been misclassified.

11 “(b) If the Labor and Workforce Development Agency or a court issues a  
12 determination that a person or employer has engaged in any of the enumerated  
13 violations of subdivision (a), the person or employer shall be subject to a civil  
14 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen  
15 thousand dollars (\$15,000) for each violation, in addition to any other penalties  
16 or fines permitted by law.

17 “(c) If the Labor and Workforce Development Agency or a court issues a  
18 determination that a person or employer has engaged in any of the enumerated  
19 violations of subdivision (a) and the person or employer has engaged in or is  
20 engaging in a pattern or practice of these violations, the person or employer shall  
21 be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and  
22 not more than twenty-five thousand dollars (\$25,000) for each violation, in  
23 addition to any other penalties or fines permitted by law.”

24 33. As explained above, Defendants’ treatment of the Class Members and the Aggrieved  
25 Employees cannot meet any part of the ABC Test and Defendants knew it. Defendants thus  
26 intentionally and willfully misclassified the Class Members and the Aggrieved Employees as  
27 independent contractors in violation of Labor Code section 226.8, subdivision (a). Moreover, this  
28 treatment was not merely occasional, but reflected Defendants’ pattern and practice of willfully

1 misclassifying Defendants' employees as independent contractors. Defendants are thus liable, through  
2 PAGA, for the civil penalties of up to \$25,000 for *each* violation as provided by Labor Code section  
3 226.8, subdivisions (b) and (c). (Lab. Code, § 2699, subd. (a).)

4 **B. MINIMUM WAGE VIOLATIONS**

5 34. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed  
6 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code  
7 section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a  
8 civil action the unpaid balance of the full amount of this minimum wage." Likewise, the Applicable  
9 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.  
10 (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130.) Labor Code section 1198 makes unlawful  
11 the employment of an employee under conditions that the IWC Wage Orders prohibit.

12 35. These minimum wage standards apply to each hour that employees work. Therefore, an  
13 employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging  
14 an employee's total pay over all hours worked, paid or not, results in an average hourly wage above  
15 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

16 36. Here, Defendants failed to fully conform their pay practices to the requirements of the  
17 law during the relevant statutory periods. The Class Members and the Aggrieved Employees were not  
18 compensated for all hours worked including, but not limited to, all hours they were subject to the control  
19 of Defendants and/or suffered or permitted to work under the California Labor Code and the Applicable  
20 Wage Orders. Among other violations, the Class Members and the Aggrieved Employees were subject  
21 to the control of Defendants while off-the-clock and did not receive minimum wage for each hour  
22 worked.

23 37. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an  
24 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees  
25 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages  
26 due and interest thereon.

27 38. When employees, such as the Class Members, are not paid for all hours worked under  
28 Labor Code section 1194, they are entitled to recover minimum wages for the time which they received

1 no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154  
2 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under  
3 Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

4 39. Labor Code section 1197.1 authorizes employees who are paid less than the minimum  
5 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other  
6 damages, as follows:

7 (1) “For any initial violation that is intentionally committed, one hundred  
8 dollars (\$100) for each underpaid employee for each pay period for  
9 which the employee is underpaid.”

10 (2) “For each subsequent violation for the same specific offense, two  
11 hundred fifty dollars (\$250) for each underpaid employee for each pay  
12 period for which the employee is underpaid regardless of whether the  
13 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.

14 (a).)

15 40. As set forth above, Defendants failed to fully compensate the Class Members and the  
16 Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to recover  
17 liquidated damages for violations of Labor Code section 1197.1.

18 41. Based upon these same factual allegations, the Class Members are likewise entitled to  
19 penalties under Labor Code sections 1199.

### 20 **C. OVERTIME VIOLATIONS**

21 42. Labor Code section 510 requires employers to compensate employees who work more  
22 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on  
23 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.  
24 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate  
25 employees at no less than twice the regular rate of pay when an employee works more than twelve  
26 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,  
27 subd. (a).) These rules are also reflected in the Applicable Wage Orders.  
28

1           43.     In accordance with Labor Code section 1194 and the Applicable Wage Orders, the Class  
2 Members and the Aggrieved Employees could not then agree and cannot now agree to work for a lesser  
3 wage than the amount provided by Labor Code sections 510 or the Applicable Wage Orders.

4           44.     Here, Defendants violated their duty to accurately and completely compensate the Class  
5 Members and the Aggrieved Employees for all overtime worked. The Class Members and the  
6 Aggrieved Employees periodically worked hours that entitled them to overtime compensation under  
7 the law but were not fully compensated for those hours.

8           45.     Defendants also had a policy and practice of denying the Class Members and the  
9 Aggrieved Employees their meal breaks, but nevertheless deducting meal break time from the Class  
10 Members' and the Aggrieved Employees' pay. As a result, the Class Members' and the Aggrieved  
11 Employees' on-the-clock hours were unlawfully reduced below what was actually worked and, by  
12 extension, their overtime hours were also reduced below what was actually worked. The Class  
13 Members and the Aggrieved Employees were thus periodically shorted the full amount of overtime pay  
14 they were lawfully owed.

15           46.     Moreover, during the relevant statutory periods, Defendants had a policy and practice  
16 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when  
17 Defendants paid overtime wages to the Class Members and the Aggrieved Employees, Defendants  
18 failed to include all compensation when calculating the regular rate of pay used in overtime calculations  
19 and when paying overtime.

20           47.     For instance, the Class Members and the Aggrieved Employees would often receive,  
21 along with their hourly rates of pay for their working hours, additional remuneration and/or non-  
22 discretionary bonus pay. Defendants, however, calculated the regular rate of pay for the Class Members  
23 and the Aggrieved Employees without factoring into the regular rate of pay all other non-hourly pay  
24 earnings received during the pay period. As a result, the Class Members and the Aggrieved Employees  
25 were underpaid overtime wages when they worked in excess of eight hours in any workday and/or forty  
26 hours in a workweek when such additional forms of remuneration were earned. By its practice of  
27 periodically requiring the Class Members and the Aggrieved Employees to work in excess of eight  
28 hours in a workday and/or forty hours in a workweek without compensating them at the rate of one and

1 one-half (1½) their regular rate of pay, Defendants willfully violated the provisions of Labor Code  
2 sections 510, 1194, and 1199.

3 48. These actions were and are in clear violation of California’s overtime laws as set forth  
4 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,  
5 §§ 11010, 11040, 11080, 11130.) As a result of Defendants’ faulty policies and practices, the Class  
6 Members and the Aggrieved Employees were not compensated for all hours worked or paid accurate  
7 overtime compensation.

8 **D. REST BREAK VIOLATIONS**

9 49. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants  
10 were and are required to provide the Class Members and the Aggrieved Employees with compensated,  
11 duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Under  
12 the Applicable Wage Orders, an employer must authorize and permit all employees to take ten minute  
13 duty free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§  
14 11010, 11040, 11080, 11130.)

15 50. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an  
16 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,  
17 or applicable regulation, standard, or order of the Industrial Welfare Commission . . . .” (Lab. Code, §  
18 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one  
19 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery  
20 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must  
21 factor in all nondiscretionary payments for work performed by the employee, including non-  
22 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base  
23 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage  
24 Orders set when and for how long the rest period must take place and the Labor Code establishes that  
25 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay  
26 their employees when employers fail to provide rest periods.

27 51. The California Supreme Court has held that, during required rest periods, “employers  
28 must relieve their employees of all duties and relinquish any control over how employees spend their

1 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing  
2 control over employees during rest periods requires that employees be “free to leave the employer’s  
3 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court  
4 explained in the context of rest breaks that employer liability attaches from adopting an unlawful  
5 policy:

6 “An employer is required to authorize and permit the amount of rest break time  
7 called for under the wage order for its industry. If it does not—if, for example,  
8 it adopts a uniform policy authorizing and permitting only one rest break for  
9 employees working a seven-hour shift when two are required—it has violated  
10 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53  
11 Cal.4th 1004, 1033.)

12 52. Here, Defendants periodically did not permit the Class Members and the Aggrieved  
13 Employees to take compliant duty-free rest breaks, free from Defendants’ control as required by Labor  
14 Code section 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM*  
15 *Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must  
16 relieve employees of all duties and relinquish control over how employees spend their time.”].) At all  
17 relevant times, the Class Members and the Aggrieved Employees were periodically not provided with  
18 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or  
19 major fraction thereof due to Defendants’ unlawful rest period policies/practices. The Class Members  
20 and the Aggrieved Employees were often expected and required to continue working through rest  
21 periods to meet the expectations Defendants and finish the workday. In some cases when the Class  
22 Members and the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to  
23 authorize and/or permit a third mandated rest period. As a result, the Class Members and the Aggrieved  
24 Employees were periodically unable to take compliant rest periods.

25 53. In such cases where Defendants did not offer the Class Members and the Aggrieved  
26 Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude  
27 employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015)  
28 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or rest

1 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest.*  
2 *Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break  
3 that was required by law but never authorized; if a break is not authorized, an employee has no  
4 opportunity to decline to take it.”].)

5 54. In addition to failing to authorize and permit compliant rest periods, the Class Members  
6 and the Aggrieved Employees were not compensated with one hour’s worth of pay at their regular rate  
7 of compensation when they were not provided with a compliant rest period in accordance with Labor  
8 Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the  
9 Applicable Wage Orders.

10 55. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-  
11 exempt employees, rest period premiums and penalties.

#### 12 **E. MEAL BREAK VIOLATIONS**

13 56. Labor Code section 512 and the Applicable Wage Orders require employers to provide  
14 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of  
15 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of  
16 more than five hours per day without providing the employee with a meal period of not less than 30  
17 minutes . . . .”]; Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130 [“No employer shall employ  
18 any person for a work period of more than five (5) hours without a meal period of not less than 30  
19 minutes . . . .”].) Additionally, an employee who works more than ten hours per day is entitled to  
20 receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a)  
21 [“An employer shall not employ an employee for a work period of more than 10 hours per day without  
22 providing the employee with a second meal period of not less than 30 minutes . . . .”].)

23 57. “An on-duty meal period is permitted only when the nature of the work prevents an  
24 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal  
25 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must  
26 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California  
27 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts  
28 have “found that the nature of the work exception applies: (1) where the work has some particular

1 external force that requires the employee to be on duty at all times, and (2) where the employee is the  
2 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*  
3 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation  
4 to determine whether the nature of the work prevents an employee from being relieved before requiring  
5 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at  
6 p. 946.)

7 58. Here, the Class Members and the Aggrieved Employees were never asked to sign any  
8 enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their  
9 work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*  
10 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not  
11 provide compliant off-duty meal periods within the first five hours of work for the Class Members and  
12 the Aggrieved Employees.

13 59. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*  
14 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s  
15 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal  
16 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend  
17 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under  
18 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit  
19 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable  
20 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*  
21 *Court*, *supra*, 53 Cal.4th at p. 1033.)

22 60. During the applicable statutory periods here, the Class Members and the Aggrieved  
23 Employees were periodically denied legally-compliant and timely off-duty meal periods of at least  
24 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of Defendants’  
25 uniform meal period policies and practices, the Class Members and the Aggrieved Employees were  
26 often not permitted to take compliant first meal periods before the end of the fifth hour of work. The  
27 Class Members and the Aggrieved Employees were also periodically not permitted to take second meal  
28 periods for shifts in excess of ten hours. Defendants thus violated Labor Code section 512 and the

1 Applicable Wage Orders by failing to advise, authorize, or permit the Class Members and the  
2 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their  
3 shifts.

4 61. Labor Code section 226.7 provides that “[a]n employer shall not require an employee  
5 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or  
6 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,  
7 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate  
8 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation  
9 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of  
10 Regs., tit. 8, §§ 11010, 11040, 11080, 11130 [“If an employer fails to provide an employee a meal  
11 period in accordance with the applicable provisions of this order, the employer shall pay the employee  
12 one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal  
13 period is not provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary  
14 payments for work performed by the employee, including non-discretionary bonuses, commissions,  
15 and other forms of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews*  
16 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.)

17 62. Accordingly, for each day that the Class Members and the Aggrieved Employees did  
18 not receive compliant meal periods, they were and are entitled to receive meal period premiums  
19 pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendants, however, failed  
20 to pay the Class Members and the Aggrieved Employees applicable meal period premiums for many  
21 workdays that the employees did not receive a compliant meal period. Thus, Defendants have violated  
22 Labor Code section 226.7 and the Applicable Wage Orders.

23 63. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-  
24 exempt employees, meal period premiums and penalties.

25 **F. UNTIMELY WAGES DURING EMPLOYMENT**

26 64. Labor Code section 204 expressly requires employers who pay employees on a weekly,  
27 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the  
28

1 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate  
2 Labor Code section 204 subject to a penalty of:

3 “(1) For any initial violation, one hundred dollars (\$100) for each failure to  
4 pay each employee.

5 “(2) For each subsequent violation, or any willful or intentional violation, two  
6 hundred dollars (\$200) for each failure to pay each employee, plus 25  
7 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.  
8 (a).)

9 65. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and  
10 entirely independent and apart from, any other penalty provided in this article . . . .” (Lab. Code, § 210,  
11 subd. (a).)

12 66. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees the  
13 wages described above, along with rest and meal break premiums, Defendants failed to timely pay the  
14 Class Members and the Aggrieved Employees within seven calendar days following the close of payroll  
15 in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden*  
16 *State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. \*3–5, 2016  
17 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under  
18 Labor Code sections 203 and 204].)

#### 19 **G. UNTIMELY WAGES AT SEPARATION**

20 67. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages  
21 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”  
22 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result  
23 of Defendants’ failure to pay the Class Members and the Aggrieved Employees for the wages described  
24 above, along with rest and meal break premiums, Defendants violated and continue to violate Labor  
25 Code section 203.

26 68. Due to Defendants’ faulty pay policies, those Class Members and Aggrieved Employees  
27 whose employment with Defendants concluded were not compensated for each and every hour worked  
28 at the appropriate rate. Defendants have failed to pay formerly-employed Class Members and

1 Aggrieved Employees whose sums were certain at the time of termination within at least seventy-two  
2 hours of their resignation and have failed to pay those sums for thirty days thereafter.

3 **H. FAILURE TO REIMBURSE BUSINESS EXPENSES**

4 69. At all relevant times herein, Defendants were subject to Labor Code section 2802, which  
5 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses  
6 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her  
7 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from  
8 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*  
9 (2007) 42 Cal.4th 554, 562.)

10 70. At all relevant times herein, Defendants were subject to Labor Code section 2804, which  
11 states that “any contract or agreement, express or implied, made by any employee to waive the benefits  
12 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his  
13 personal representative of any right or remedy to which he is entitled under the laws of this State.”

14 71. Thus, the Class Members and the Aggrieved Employees were and are entitled to  
15 reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse  
16 even extends to the use of equipment the employee may already own and would be required to pay for  
17 anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold  
18 question in this case is this: Does an employer always have to reimburse an employee for the reasonable  
19 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to  
20 the situation in which the employee incurred an extra expense that he or she would not have otherwise  
21 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer  
22 would receive a windfall because it would be passing its operating expenses on to the employee.”].)

23 72. Here, Defendants failed to fully reimburse the Class Members and the Aggrieved  
24 Employees for necessary expenditures incurred as a direct consequence and requirement of performing  
25 their job duties, including the costs associated with their personal cell phone and mileage they required  
26 to perform their work. Consequently, Defendants failed to comply with Labor Code section 2802.

1           **I.       WAGE STATEMENT VIOLATIONS**

2           73.     Defendants also failed to provide accurate itemized wage statements in accordance with  
3 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision  
4 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage  
5 statement in writing showing:

- 6                   (1)     The gross wages earned;  
7                   (2)     The total hours worked by the employee;  
8                   (3)     The number of piece-rate units earned and any applicable piece rate if  
9                             the employee is paid on a piece rate basis;  
10                  (4)     All deductions, provided that all deductions made on written orders of  
11                             the employee may be aggregated and shown as one item;  
12                  (5)     The net wages earned;  
13                  (6)     The inclusive dates of the period for which the employee is paid;  
14                  (7)     The name of the employee and only the last four digits of his or her social  
15                             security number or an employee identification number other than a social  
16                             security number;  
17                  (8)     The name and address of the legal entity that is the employer; and  
18                  (9)     All applicable hourly rates in effect during the pay period and the  
19                             corresponding number of hours worked at each hourly rate by the  
20                             employee.

21          74.     Due to Defendants' failure to pay the Class Members and the Aggrieved Employees  
22 properly as described above, the wage statements issued do not indicate the correct amount of gross  
23 wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect  
24 during the pay period and the corresponding number of hours worked at each hourly rate. Thus,  
25 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

26          75.     In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and  
27 intentionally failed to provide the Class Members and the Aggrieved Employees with accurate itemized  
28 wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they

1 were not providing the Class Members and the Aggrieved Employees with wage statements required  
2 by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett*  
3 *v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and  
4 intentionally violated Labor Code section 226 because the “[d]efendant knew that it was not providing  
5 total hours worked to plaintiff or other employees paid on commission” even though it believed that  
6 employees paid solely on commission or commission and salary “are exempt and therefore we do not  
7 record hours on a wage statement.”].)

8 **J. RECORDKEEPING VIOLATIONS**

9 76. Labor Code section 226, subdivision (a), requires employers to keep an accurate record  
10 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent  
11 part, as follows:

12 “Any employer who violates subdivision (a) of Section 226 shall be subject to a  
13 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per  
14 violation in an initial citation and one thousand dollars (\$1,000) per employee  
15 for each violation in a subsequent citation, for which the employer fails to  
16 provide the employee a wage deduction statement or fails to keep the records  
17 required in subdivision (a) of Section 226. The civil penalties provided for in  
18 this section are in addition to any other penalty provided by law.” (Lab. Code, §  
19 226.3, emphasis added.)

20 77. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including  
21 Defendants, to:

22 “Keep, at a central location in the state or at the plants or establishments at which  
23 employees are employed, payroll records showing the hours worked daily by  
24 and the wages paid to, and the number of piece-rate units earned by and any  
25 applicable piece rate paid to, employees employed at the respective plants or  
26 establishments. These records shall be kept in accordance with rules established  
27 for this purpose by the commission, but in any case shall be kept on file for not  
28 less than three years. An employer shall not prohibit an employee from

maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

78. As explained in detail above, Defendants failed to provide the Class Members and the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track hours worked by the Class Members and the Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

79. The failure to accurately track hours worked also resulted in a failure of Defendants to keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees, including Plaintiff and the other Class Members, in violation of Labor Code section 1174, subdivision (d).

#### **V. CLASS ACTION ALLEGATIONS**

80. As mentioned above, Plaintiff brings this action on behalf of himself and the Class Members pursuant to section 382 of the Code of Civil Procedure.

81. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff at this time; however, it is estimated that the number of Class Members is greater than 100 individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment records.

82. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

A. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class Members for all hours worked, including all minimum wages;

1 B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class  
2 Members for all required overtime wages at the Class Members' regular rate of pay;

3 C. Whether Defendants' rest period policies and practices afforded legally  
4 compliant rest periods or compensation in lieu thereof;

5 D. Whether Defendants' meal period policies and practices afforded legally  
6 compliant meal periods or compensation in lieu thereof;

7 E. Whether Defendants maintained accurate employment records;

8 F. Whether Defendants timely paid all wages during employment;

9 G. Whether Defendants timely paid all wages earned and unpaid at separation;

10 H. Whether Defendants indemnified their employees for all necessary business  
11 expenditures;

12 I. Whether Defendants furnished legally-compliant wage statements to the Class  
13 Members pursuant to Labor Code section 226;

14 J. Whether Defendants' violations of the Labor Code and the Applicable Wage  
15 Orders amounted to a violation of California's UCL.

16 83. **Predominance of Common Questions:** Common questions of law and fact  
17 predominate over questions that affect only individual Class Members. The common questions of law  
18 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices  
19 applicable to each individual class member, such as Defendants' uniform policy and practice of failing  
20 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide  
21 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant  
22 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,  
23 the common questions predominate over individual questions concerning each individual class  
24 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

25 84. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members  
26 because Plaintiff was employed by Defendants as a non-exempt employee in California during the  
27 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,  
28 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages

1 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and  
2 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was  
3 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform  
4 meal period policies and practices, was not provided accurate itemized wage statements, was not paid  
5 all wages in full and on time, , and was subject to other similar policies and practices to which the Class  
6 Members were subject.

7       85.     **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to  
8 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are  
9 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's  
10 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past  
11 and are committed to vigorously prosecuting this action on behalf of the Class Members.

12       86.     **Superiority:** The California Labor Code is broadly remedial in nature and serves an  
13 important public interest in establishing minimum working conditions and standards in California.  
14 These laws and labor standards protect the average working employee from exploitation by employers  
15 who have the responsibility to follow the laws and who may seek to take advantage of superior  
16 economic and bargaining power in setting onerous terms and conditions of employment. The nature of  
17 this action and the format of laws available to Plaintiff and the Class Members make the class action  
18 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each  
19 employee were required to file an individual lawsuit, Defendants would necessarily gain an  
20 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of  
21 each individual plaintiff with their vastly superior financial and legal resources.

22       87.     Moreover, requiring each Class Member to pursue an individual remedy would also  
23 discourage the assertion of lawful claims by employees who would be disinclined to file an action  
24 against their former or current employer for real and justifiable fear of retaliation and permanent  
25 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the  
26 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying  
27 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and  
28 which would establish potentially incompatible standards of conduct for Defendants or legal

determinations with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests.

88. Further, the claims of the individual Class Members are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As such, the Class Members identified above are maintainable as a class under section 382 of the Code of Civil Procedure.

## **VI. EXHAUSTION OF REMEDIES**

89. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

90. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

## **VII. CAUSES OF ACTION**

### **First Cause of Action**

*Penalties Pursuant to PAGA for Willful Misclassification in Violation of  
Labor Code sections 226.8 and 2775  
(Against All Defendants)*

91. Plaintiff realleges and incorporates by reference all previous paragraphs.

92. As explained in more detail above, at all times during the Class Period and PAGA Period, Defendants treated the Class Members and the Aggrieved Employees as independent contractors despite the fact that Defendants failed to meet the standards required by the ABC Test to classify the Class Members and the Aggrieved Employees as independent contractors. Put simply,

1 Defendants' treatment of the Class Members and the Aggrieved Employees cannot meet any part of  
2 the ABC Test and Defendants knew it. Plaintiff and the Aggrieved Employees are thus "aggrieved  
3 employees" within the meaning of PAGA, as they were employed by Defendants during the PAGA  
4 Period and suffered the Labor Code violations alleged herein.

5 93. At all relevant times, Plaintiff and the other Aggrieved Employees were "employees"  
6 for purposes of the California Labor Code, as defined in section 2775, although they were knowingly,  
7 willfully, and intentionally misclassified by Defendants' as independent contractors as part of  
8 Defendants' unlawful scheme to obtain the economic advantages that flow from avoiding the financial  
9 obligations that the Labor Code and Applicable Wage Orders imposes on employers. This was part of  
10 a pattern as practice of willful misclassification of all, or virtually all, of Defendants' employees who  
11 meet the definition of "Aggrieved Employees" provided above, thereby triggering heightened penalties  
12 under Labor Code section 226.8, subdivisions (b) and (c).

13 94. Plaintiff by this action seeks to recover, on behalf of himself and all other Aggrieved  
14 Employees, the civil penalties provided by Labor Code section 226.8 and by PAGA, as specified in  
15 Labor Code section 2699, subdivision (f). Plaintiff seeks to recover the civil penalties through a  
16 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*  
17 *Court* (2009) 46 Cal.4th 969, 986.

18 95. In addition to the penalties sought as described above, Plaintiff was compelled to retain  
19 the services of counsel to file this action to protect his interests and those of the Aggrieved Employees,  
20 and to assess and collect the penalties owed by Defendants. Plaintiff has thereby incurred attorneys'  
21 fees and costs, which Plaintiff is also entitled to recover under Labor Code section 2699, subdivision  
22 (g)(1).

23 **Second Cause of Action**

24 *Failure to Pay All Minimum Wages*

25 *(Against All Defendants)*

26 96. Plaintiff realleges and incorporates by reference all previous paragraphs.

27 97. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish the  
28 right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab.

1 Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130.) Labor Code sections 1194,  
2 subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal  
3 minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together with  
4 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages  
5 and interest accrued thereon.

6 98. Here, Defendants failed to fully conform their pay practices to the requirements of the  
7 law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated  
8 for all hours worked including, but not limited to, all hours they were subject to the control of  
9 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage  
10 Orders.

11 99. Labor Code section 1198 makes unlawful the employment of an employee under  
12 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,  
13 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage  
14 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages  
15 in an amount equal to the wages due and interest thereon.

16 100. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,  
17 Plaintiff and the other Class Members have sustained economic damages, including but not limited to  
18 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover  
19 economic and statutory damages and penalties and other appropriate relief because of Defendants'  
20 violations of the Labor Code and Applicable Wage Orders.

21 101. Defendants' practices and policies regarding illegal employee compensation are  
22 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil  
23 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,  
24 statutory penalties, attorneys' fees, and costs of suit according to Labor Code sections 204, 218.5, 1194,  
25 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

## 2

## 3

4

5  
6  
7  
8  
9  
0  
1  
2  
3  
4

5  
6  
7  
8  
9  
0  
1  
2

## 3

## 4

## 5

6

106. Section 12 of the Applicable Wage Orders, and Labor Code section 226.7 establish the right of employees to be provided with a rest period of at least ten minutes for each four hour period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130.)

107. Due to Defendants' unlawful rest period policies and practices described in detail above, Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

108. The foregoing violations create an entitlement to recovery by Plaintiff and the other Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders, and California Labor Code section 226.7.

### **Fifth Cause of Action**

### *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

*(Against All Defendants)*

109. Plaintiff realleges and incorporates by reference all previous paragraphs.

110. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other Class Members, with all required meal periods in accordance with the mandates of the Labor Code and the Applicable Wage Orders, for the reasons set forth herein above. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

111. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130.)

1 **Sixth Cause of Action**

2 *Failure to Maintain Accurate Employment Records*

3 *(Against All Defendants)*

4 112. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 113. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep  
6 at a central location in the state or at the plants or establishments at which employees are employed,  
7 payroll records showing the hours worked daily by and wages paid to employees employed at the  
8 respective plants or establishments. These records must be kept in accordance with rules established  
9 for this purpose by the commission, but in any case shall be kept on file for not less than two years.

10 114. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to  
11 maintain accurate and complete records.

12 115. Defendant has intentionally and willfully failed to keep accurate and complete records  
13 showing the hours worked daily and wages paid to Plaintiff and the other Class Members. Thus,  
14 Plaintiff and the other Class Members have been denied their legal right and protected interest in having  
15 available at a central location at the plant or establishment where they are employed, accurate and  
16 complete payroll records showing the hours worked daily by, and the wages paid to, employees at those  
17 respective locations pursuant to Labor Code 1174.

18 **Seventh Cause of Action**

19 *Failure to Pay Wages Timely during Employment*

20 *(Against All Defendants)*

21 116. Plaintiff realleges and incorporates by reference all previous paragraphs.

22 117. Labor Code section 200 provides that "wages" include all amounts for labor performed  
23 by employees of every description, whether the amount is fixed or ascertained by the standard of time,  
24 task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all  
25 wages earned by any person in any employment are payable twice during the calendar month and must  
26 be paid not more than seven days following the close of the period when the wages were earned. Labor  
27 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a  
28

1 penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each  
2 subsequent violation, plus 25% of the amount unlawfully withheld.

3 118. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards  
4 to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to  
5 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to  
6 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

7 119. Defendants as a matter of established company policy and procedure in the State of  
8 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to  
9 work without full compensation, to work without legally-compliant off-duty meal periods, to work  
10 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other  
11 Class Members within seven days of the close of payroll, as required by law.

12 120. Defendants, as a matter of established company policy and procedure in the State of  
13 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of  
14 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,  
15 and/or defraud Plaintiff and the other Class Members.

16 121. Defendants' pattern, practice, and uniform administration of its corporate policy of  
17 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and  
18 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the  
19 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest  
20 owed to them pursuant to Labor Code sections 210 and 218.5.

21 **Eighth Cause of Action**

22 *Failure to Pay All Wages Earned and Unpaid at Separation*

23 *(Against All Defendants)*

24 122. Plaintiff realleges and incorporates by reference all previous paragraphs.

25 123. The actionable period for this cause of action is three years prior to the filing of this  
26 complaint through the present, and ongoing until the violations are corrected or the class is certified.  
27 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*  
28 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and

1 202 of the California Labor Code require Defendants to pay all compensation due and owing to its  
2 former employees (including the formerly-employed Class Members) during the actionable period for  
3 this cause of action at or around the time that their employment is or was terminated, or ended.

4 124. Section 203 of the Labor Code provides that if an employer willfully fails to pay  
5 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the  
6 employer is liable for penalties in the form of continued compensation up to thirty workdays.

7 125. Due to Defendants' faulty pay policies, those Class Members whose employment with  
8 Defendants has concluded were not compensated for each and every hour worked at the appropriate  
9 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums  
10 were certain at the time of termination within seventy-two hours of their resignation and have failed to  
11 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

12 126. As a result, Defendants are liable to the formerly-employed Class Members for waiting  
13 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to  
14 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon  
15 termination entitles an employee to recover waiting time penalties].)

16 **Ninth Cause of Action**

17 *Failure to Indemnify All Necessary Business Expenditures*

18 *(Against All Defendants)*

19 127. Plaintiff realleges and incorporates by reference all previous paragraphs.

20 128. California Labor Code Section 2802 states that employers must "indemnify" an  
21 employee for "all necessary expenditures or losses incurred by the employee in direct consequence of  
22 the discharge of his or her duties, or of his or her obedience to the directions of the employer." Likewise,  
23 Labor Code section 2804 states that "any contract or agreement, express or implied, made by any  
24 employee to waive the benefits of this article or any part thereof, is null and void, and this article shall  
25 not deprive any employee or his personal representative of any right or remedy to which he is entitled  
26 under the laws of this State."

27 129. Here, Plaintiff and the other Class Members paid out of pocket for necessary business  
28 expenditures incurred as a direct consequence and requirement of performing their job duties, including

1 the costs associated with their personal cell phone and mileage they required to perform their work.  
2 Despite knowing that Plaintiff and the other Class Members incurred these necessary business  
3 expenses, and requiring Plaintiff and the other Class Members to use such items, Defendants did not  
4 reimburse them.

5 130. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such  
6 necessary business expenses, plus interest from the date each incurred such business expenses, plus  
7 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

8 **Tenth Cause of Action**

9 *Failure to Furnish Accurate Itemized Wage Statements*

10 *(Against All Defendants)*

11 131. Plaintiff realleges and incorporates by reference all previous paragraphs.

12 132. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the  
13 time of each payment to furnish an itemized wage statement in writing showing:

- 14 (1) The gross wages earned;
- 15 (2) The total hours worked by the employee;
- 16 (3) The number of piece-rate units earned and any applicable piece rate if  
17 the employee is paid on a piece rate basis;
- 18 (4) All deductions, provided that all deductions made on written orders of  
19 the employee may be aggregated and shown as one item;
- 20 (5) The net wages earned;
- 21 (6) The inclusive dates of the period for which the employee is paid;
- 22 (7) The name of the employee and only the last four digits of his or her social  
23 security number or an employee identification number other than a social  
24 security number;
- 25 (8) The name and address of the legal entity that is the employer; and
- 26 (9) All applicable hourly rates in effect during the pay period and the  
27 corresponding number of hours worked at each hourly rate by the  
28 employee.

133. As set forth above, Defendants issued and continues to issue wage statements to its non-exempt employees including Plaintiff and the other Class Members that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as described above, Defendants failed to include required information on their wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision (a).

134. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

135. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and reasonable attorneys' fees.

### Eleventh Cause of Action

### *Violations of California's Unfair Competition Law*

*(Against All Defendants)*

136. Plaintiff realleges and incorporates by reference all previous paragraphs.

137. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code section 17200 through 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of compensation to which they are legally entitled. These practices constitute unfair and unlawful competition and provide an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

138. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein, Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies, as necessary

1 and according to proof, to restore any and all monies withheld, acquired and/or converted by  
2 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

3 139. The acts complained of herein occurred within the four years prior to the initiation of  
4 this action and are continuing into the present and ongoing.

5 140. Plaintiff was compelled to retain the services of counsel to file this Court action to  
6 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf  
7 of Defendants' current non-exempt employees and to enforce important rights affecting the public  
8 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff  
9 is entitled to recover under Code of Civil Procedure section 1021.5.

10 **Twelfth Cause of Action**

11 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201,*  
12 *202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197,*  
13 *1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code*  
14 *(Against All Defendants)*

15 141. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 142. Based on the above allegations incorporated by reference, Defendants violated Labor  
17 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1185, 1194, 1194.2,  
18 1197, 1197.1, 1198, 1198.5, 1199, 2775, 2802, 2804, and others that may be applicable; and the  
19 Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130), and others that  
20 may be applicable.

21 143. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections  
22 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210,  
23 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2775,  
24 2802, 2804, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs.,  
25 tit. 8, §§ 11010, 11040, 11080, 11130), and others that may be applicable.

26 144. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,  
27 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time  
28 of trial subject to the following formula:

- 1           A.     \$100 for the initial violation per employee per pay period; and  
2           B.     \$200 for each subsequent violation per employee per pay period.

3           145.   These penalties must be allocated seventy-five percent to the Labor and Workforce  
4 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties  
5 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*  
6 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*  
7 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at \*9,  
8 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section  
9 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also  
10 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL  
11 2373372, at \*17 fn. 70 [noting that federal courts applying California law have found that “PAGA  
12 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for  
13 different Labor Code violations.”], internal quotation marks omitted).

14           146.   In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all  
15 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section  
16 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code  
17 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.  
18 780, 788.)

19           147.   For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default  
20 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny  
21 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount  
22 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand  
23 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails  
24 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of  
25 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the  
26 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and  
27 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,  
28 subdivision (e).

1           148. Labor Code section 210 provides that “in addition to, an entirely independent and apart  
2 from, any other penalty provided in this article, every person who fails to pay the wages of each  
3 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any  
4 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each  
5 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure  
6 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty  
7 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover  
8 penalties under Labor Code section 210 through PAGA.

9           149. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and  
10 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is  
11 intentionally committed for each underpaid employee for each pay period for which the employee is  
12 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific  
13 offense for each underpaid employee for each pay period for which the employee is underpaid  
14 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and  
15 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant  
16 to Labor Code section 1197.1.

17           150. Plaintiff was compelled to retain the services of counsel to file this action to protect his  
18 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed  
19 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled  
20 to recover under Labor Code section 2699, subdivision (g)(1).

21 **VIII. DEMAND FOR JURY TRIAL**

22           151. Plaintiff hereby demands trial by jury of Plaintiff’s and the Class Members’ claims  
23 against Defendants.

24 **IX. PRAYER FOR RELIEF**

25           Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought  
26 against Defendants, as follows:

- 27           1. For an order certifying the proposed class;
- 28           2. For an order appointing Plaintiff as representative of the class;

3. For an order appointing Plaintiff's counsel as counsel for the class;
4. For willful misclassification, penalties as provided by Labor Code section 226.8, subdivisions (b) and (c), any other penalties applicable under Labor Code section 2699, and attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1);
5. For the failure to pay all minimum wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and others as may be applicable;
6. For the failure to pay all overtime wages, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198, and others as may be applicable;
7. For the failure to provide rest periods and pay missed rest period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 226.7;
8. For the failure to provide meal periods and pay missed meal period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 226.7 and 512;
9. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;
10. For the failure to pay wages timely during employment, the unpaid balance of the compensation owed to Plaintiff and the other Class Members and any applicable penalties owed to them pursuant to Labor Code section 210;
11. For the failure to pay all wages earned and unpaid at separation, statutory waiting time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;
12. For the failure to indemnify all necessary business expenditures, all unreimbursed business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);

- 1       **13.** For the violations of California’s Unfair Competition Law, restitution to Plaintiff and  
2       the other Class Members of all money and/or property unlawfully acquired by  
3       Defendants by means of any acts or practices declared by this Court to be in violation  
4       of Business and Professions Code sections 17200 through 17210;
- 5       **14.** For the claim of penalties pursuant to PAGA and other provisions of the California  
6       Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for  
7       each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),  
8       in the representative action brought on behalf of Plaintiff and the Aggrieved Employees  
9       pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties  
10      available under Labor Code section 210;
- 11      **15.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6  
12      and Civil Code sections 3287 and 3289;
- 13      **16.** On all causes of action for which attorneys’ fees may be available, for attorneys’ fees  
14      and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure  
15      section 1021.5, and others as may be applicable;
- 16      **17.** For an order enjoining Defendants, and each of them, and their agents, servants, and  
17      employees, and all persons acting under, in concert with, or for them, from acting in  
18      derogation of any rights or duties adumbrated in this complaint; and
- 19      **18.** For such other and further relief, this Court may deem just and proper.

20  
21 Dated: November 19, 2024

**MELMED LAW GROUP P.C.**



**HANNAH BECKER**

Attorneys for Plaintiff, the Putative Class, and the  
Aggrieved Employees

**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, California 90067.

I declare that on the date hereof, November 19, 2024, I served the foregoing document(s) described as:

- **Second Amended Class and Representative Action Complaint**

By causing a true copy to be sent to the following individuals and/or parties:

**RUKIN HYLAND & RIGGIN LLP**

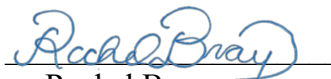
John F. Hyland  
jhyland@rukinhyland.com  
lcoffey@rukinhyland.com  
pwach@rukinhyland.com  
1939 Harrison St. Suite 925  
Oakland, CA 94612

Attorneys for Defendant Pacific Agri-Products, Inc.

**[XX] BY ELECTRONIC TRANSMISSION.** Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 19, 2024, in San Diego, California.

  
Rachel Bray