

CASE ATTACHMENT COVER PAGE		(ENDORSED) ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on Sep 5, 2023 <i>CLERK OF THE SUPERIOR COURT</i> <i>Deputy Clerk: Jordyn Drake</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org		
ATTACHMENT NAME: Declaration: Plaintiff's First Amended Complaint		
CASE NAME: Fransico Garcia vs. Refresco Beverages US, Inc.		CASE NUMBER: CIVSB2313159
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David P. Myers (SBN 206137)
dmyers@myerslawgroup.com
Jason Hatcher (SBN 285481)
jhatcher@myerslawgroup.com
Andriana N. Bravo (SBN 349191)
abravo@myerslawgroup.com
THE MYERS LAW GROUP, A.P.C.
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (909) 919-2027
Facsimile: (888) 375-2102

Attorneys for Plaintiff Francisco Garcia,
and all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

FRANCISCO GARCIA, on behalf of himself
and all others similarly situated

PLAINTIFFS,

v.

REFRESCO BEVERAGES US, INC., a
Georgia Corporation; and DOES 1 through
100, inclusive

DEFENDANTS.

Case No.: CIVSB2313159

CLASS ACTION

FIRST AMENDED CLASS ACTION
COMPLAINT

1. **Failure to Pay All Overtime and Double Time Wages;**
2. **Failure to Provide Meal Periods;**
3. **Failure to Provide Rest Periods;**
4. **Failure to Pay All Wages Due at Separation;**
5. **Failure to Provide Accurate Wage Statements;**
6. **Unfair Competition**
7. **Private Attorneys General Act**

DEMAND FOR JURY

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I. INTRODUCTION

This is an action brought by Plaintiff FRANCISCO GARCIA (“Plaintiff”), on his behalf and all others similarly situated, against REFRESCO BEVERAGES US, INC, a Georgia Corporation, and other as of yet unnamed DOE Defendants 1-100 (hereinafter collectively “Defendants”) alleging, among other things violations of the California Labor Code and Unfair Competition Law. Plaintiff seeks damages, attorneys’ fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges, as follows:

II. GENERAL ALLEGATIONS

1. This class action arises from wage and hour violations for, among other things, Defendants failure to compensate hourly non-exempt employees in compliance with California law. As more fully described herein, Defendants failed and continue to fail to compensate Plaintiff and class members daily overtime pay and overtime premiums based on the correct regular rate of pay, provide legally compliant paid rest breaks, and engages in other Labor Code violations.

2. Plaintiff seeks among other things, all wages, restitutionary disgorgement, and statutory penalties. Plaintiff seeks to represent the following Class:

All current and former hourly manufacturing and production non-exempt employees of Defendants for the period of June 7, 2019 through the date of class certification (“the Class”).

3. This Court is the proper court and this action is properly filed in San Bernardino County and in this judicial district because Defendants do business in San Bernardino County and because Defendants’ obligations and liability arise therein.

4. Plaintiff is a former hourly production non-exempt employee for Defendants and a resident of the County of San Bernardino, State of California.

5. Plaintiff is informed and believes, and thereon alleges that Refresco Beverages US, Inc. is a Georgia corporation.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 100 are unknown to Plaintiff, who therefore sues the DOE Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names

1 and capacities when they have been ascertained.

2 7. Plaintiff is informed and believes, and thereon alleges, that each and all of the
3 acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants,
4 each acting as agents and/or employees, and/or under the direction and control of each of the
5 other Defendants, and that said acts and failures to act were within the course and scope of said
6 agency, employment and/or direction and control. Plaintiff is informed and believes, and thereon
7 alleges, that at all times material hereto Defendants were and are the agents of each other.

8 8. Plaintiff is informed and believes, and thereon alleges, that Defendant DOES 1
9 through 100 are the partners, owners, shareholders, managers, joint employers, or alter egos of
10 Defendant Employers, and were acting on behalf of Defendant Employers in the payment of
11 wages to Plaintiff.

12 9. At all relevant times alleged herein Plaintiff was employed by Defendants, and
13 Plaintiff held a position with Defendants in San Bernardino County, State of California.

14 **III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

15 10. Plaintiff and the Class worked as hourly manufacturing and production non-
16 exempt employees for Defendants.

17 11. Throughout the period of August 1, 2020 through the date of class certification
18 (“Class Period”), Plaintiff and all Class members were and are employees of Defendants, entitled
19 to all of the protections afforded to employees under the Labor Code and applicable IWC Wage
20 Orders.

21 12. Defendants’ primary business is the operation of manufacturing and producing
22 beverages. This work is performed in part by Plaintiff and the Class members.

23 13. During the relevant time period, Plaintiff and the Class members worked in
24 excess of eight (8) hours in a workday and in excess of ten (10) hours in a workday.

25 14. During the relevant time period, Defendants failed to pay Plaintiff and Class
26 members the full amount of overtime and/or double time wages based on their correct regular
27 rate of pay.

28 15. When Class members worked shifts over eight (8) hours per day Defendants did

1 not pay them daily overtime and/or double time pay in accordance with the California Labor
2 Code and applicable Wage Order.

3 16. Defendants failed to pay Plaintiff and the Class members overtime and/or double
4 time pay for daily overtime hours worked in a workday without exemption.

5 17. Defendants conduct, as alleged herein, has caused Plaintiff and Class members
6 damages including, but not limited to, loss of wages and compensation.

7 18. Defendants are liable to Plaintiff and the Class for failing to pay overtime and/or
8 double time wages for all hours worked based on the regular rate of pay, failing to provide legally
9 compliant meal and rest periods, and failure to pay all wages owed upon termination, and unfair
10 competition.

11 19. Plaintiff is a member of and seeks to be the representative for the Class of
12 similarly situated employees who all have been exposed to, have suffered, and/or were permitted
13 to work under, Defendant's unlawful employment practices as alleged herein.

14 20. Plaintiff and the Class were suffered and/or permitted to and worked in excess of
15 eight (8) hours in a day without receiving all earned overtime and/or double time pay for all
16 overtime and/or double time hours worked. Despite knowing that Plaintiff and the Class were
17 working overtime and/or double time hours, Defendants refused to pay the full amount of
18 overtime and/or double time premiums for all overtime hours worked.

19 21. Plaintiff and the Class were suffered and/or permitted to and worked in excess of
20 eight (8) hours in a day without receiving all earned overtime pay for all overtime hours worked.
21 Despite knowing that Plaintiff and the Class were working overtime hours, Defendants refused
22 to pay the full amount of overtime premiums for all overtime hours worked.

23 22. Throughout the Class Period, Defendants failed to authorize and permit legally
24 compliant meal breaks. Plaintiff and Class members were assigned to and required to work shifts
25 lasting over five (5) hours and were not provided nor allowed to take a thirty (30) minute
26 uninterrupted off-duty meal break without exemption. Plaintiff and Class members were
27 assigned to and required to work shifts lasting over ten (10) hours without a second thirty (30)
28 minute uninterrupted off-duty meal break without exemption.

1 23. Throughout the Class Period, Defendants failed and continue to fail to pay for
2 meal period violations at the correct regular rate of pay.

3 24. Throughout the Class Period, Defendants failed to authorize and provide paid rest
4 periods compliant with the provisions of the California Labor Code and applicable Wage Order.
5 Plaintiff and Class members were assigned to and required to work shifts lasting over ten (10)
6 hours and were not provided nor allowed to take the required number of non-captive paid ten-
7 minute uninterrupted rest break during each four (4) hour work period, or major fraction thereof,
8 at the direction of Defendants and/or with Defendants knowledge and acquiescence.

9 25. Throughout the Class Period, Defendants failed and continue to fail to pay for
10 rest period violations at the correct regular rate of pay.

11 26. Defendants failed to pay Plaintiff and the Class all earned wages timely upon
12 termination. This includes, but is not limited to, unpaid overtime wages and/or meal period
13 premiums at the regular rate of pay and/or rest period premiums at the regular rate of pay.

14 27. The wage statements provided by Defendants failed to provide accurate
15 information as to the hourly rate for all hours worked, total hours worked, meal and rest period
16 premium payments, the net wages earned, and the gross wages earned per pay period.

17 28. The underpayment of wages, Labor Code violations, and Wage Order violations
18 upon Plaintiff and the Class are a consequence of Defendants' unlawful policies and practices
19 which were centrally devised, implemented, communicated, and applied to Plaintiff and the
20 Class.

21 29. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and
22 continue to be systematically deprived of their earned wages to which they are entitled by law
23 and deprived of other benefits of the Labor Code and applicable IWC Wage Orders, to the
24 detriment of himself and the public at large.

25 **CLASS DEFINITION AND CLASS ALLEGATIONS**

26 30. Plaintiff brings this action on his own behalf and on behalf of all others similarly
27 situated, pursuant to California Code of Civil Procedure §382, and as a member of the Class
28 defined as follows:

1 All current and former hourly manufacturing and production non-exempt
2 employees of Defendants for the period of June 7, 2019 through the date of
3 class certification (“the Class”).

4 **Sub-Class 1**

5 All current and former hourly manufacturing and production non-exempt
6 employees of Defendants for the period of June 7, 2019 through the date of
7 class certification who worked at least one shift of more than eight (8) hours.
8 (“Daily Overtime” Sub-Class).

9 **Sub-Class 2**

10 All current and former hourly manufacturing and production non-exempt
11 employees of Defendants for the period of June 7, 2019 through the date of
12 class certification who worked at least one day of more than eight (8) hours in
13 the same period of receiving a bonus and/or GTL pay. (“Regular Rate” Sub-
14 Class).

15 **Sub-Class 3**

16 All current and former hourly manufacturing and production non-exempt
17 employees of Defendants for the period of June 7, 2019 through the date of
18 class certification who worked at least one shift of more than ten (10) hours.
19 (“Meal Period” Sub-Class).

20 **Sub-Class 4**

21 All current and former hourly manufacturing and production non-exempt
22 employees of Defendants for the period of June 7, 2019 through the date of
23 class certification who worked at least one shift of 10 hours or more. (“Rest
24 Period” Sub-Class).

25 **Sub-Class 5**

26 All current and former hourly manufacturing and production non-exempt
27 employees of Defendants for the period of June 7, 2022 through the date of
28 class certification who were provided a wage statement by Defendants. (“Pay
Stub” Sub-Class).

Sub-Class 6

All former hourly manufacturing and production non-exempt employees of
Defendants for the period of June 7, 2020 through the date of class certification
who are members of Sub-Classes 1 or 2 or 3 or 4. (“Waiting Time Penalties”
Class).

31. Plaintiff reserves the right to amend or otherwise alter the class definition
presented to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in
response to facts learned through discovery, legal arguments advanced by Defendants or
otherwise.

32. Further, this action is brought for the benefit of the public, who are entitled to

1 restitution of those funds improperly withheld by Defendants.

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

4 34. **Numerosity:** Members of the Class are so numerous that their individual joinder
5 is impracticable. It is possible to ascertain the number of former and current employees who are
6 members of the proposed class, but they are so numerous that joinder is impracticable. The
7 proposed Class includes future employees (persons who are hired by defendant within the class
8 period, but who are not now class members as current or former employees) whose joinder is
9 currently impossible. The precise number of Class members and their addresses can be
10 determined by Defendants' business records and will become known to Plaintiff through
11 discovery. Class members may be notified of the pendency of this action by mail, e-mail, the
12 internet, or published and posted notice.

13 35. **Typicality:** Plaintiff's claims are typical of the claims of members of the
14 proposed classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has
15 been subjected to Defendants' unlawful employment practices, as alleged in this Complaint.

16 36. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect
17 the interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
18 Plaintiff has retained competent and experienced counsel. The interests of Class members will
19 be fairly and adequately protected by Plaintiff and her counsel.

20 37. **Common Questions of Law and Fact:** Common questions of law and fact exist
21 as to all Class members and predominate over any questions affecting solely individual members
22 of the proposed Class:

- 23 a. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff
24 and the members of the Class the full amount of overtime and/or double time
25 wages, based on the regular rate of pay, for each hour in excess of eight (8) per
26 day worked in violation of the applicable Labor Code provisions including
27 §§510 and 1194;

- 28 b. Whether Defendants failed to pay the appropriate premium overtime and/or

double time compensation to Plaintiff and the Class members based on the correct regular rate of pay;

- c. Whether Defendants improperly retained, appropriated or deprived Plaintiff and the Class members of the use of monies or sums to which they were legally entitled;
- d. Whether Defendants engaged in unfair business practices;
- e. Whether Defendants were participants in the alleged unlawful conduct;
- f. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class paid rest periods in violation of IWC Wage Order No. 1-2001 and Labor Code §226.7 by failing to provide the required number of duty-free, non-captive, rest periods per shift;
- g. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class paid meal periods in violation of IWC Wage Order No. 1-2001 and Labor Code §§ 226.7, 512 by failing to timely provide the required number of 30-minute uninterrupted meal periods to Plaintiff and Class members;
- h. Whether Defendants engaged in unfair practice and violated California Business and Professions Code §17200 by failing to compensate Plaintiff and the members of the Class their full amount of overtime wages;
- i. Whether Defendants violated Labor Code §203 by failing to pay all wages due upon separation;
- j. Whether Defendants failed to provide accurate wage statements to Plaintiff and the members of the Class; and
- k. The nature and extent of class-wide injury and measure of damages for the injury.

38. **Superiority and Substantial Benefit:** A class action is the superior method for the fair and efficient adjudication of this controversy. Defendants implemented illegal schemes that are generally applicable to the members of the proposed plaintiff class and sub-classes.

1 Damages suffered by each Class member may be relatively small given the burden and expense
2 of individual prosecution of the complex and expensive litigation necessitated by Defendants'
3 conduct. Further, it would be virtually impossible for the Class members to redress the wrongs
4 done to them on an individual basis. Even if Class members could afford such individual
5 litigation, the court system could not. By contrast, the class action device presents far fewer
6 management difficulties, and provides the benefits of a single adjudication, economies of scale,
7 and comprehensive supervision by a single court.

8 39. Plaintiff knows of no difficulty that will be encountered in the management of
9 this litigation that would preclude its maintenance as a class action. Plaintiff is informed and
10 believes, and on that basis alleges, that the amount of money due each Class member as economic
11 damages is ascertainable from Defendants' records or may readily be determined by other means.

12 40. The Classes should also be certified because:

- 13 a. The prosecution of separate actions by individual Class members would
14 create a risk of inconsistent or varying adjudications with respect to individual
15 Class members, which would establish incompatible standards of conduct for
16 Defendants;
- 17 b. The prosecution of separate actions by individual Class members creates the
18 risk of adjudication with respect to them, which would, as a practical matter,
19 be dispositive of the interests of the other Class members not parties to the
20 adjudications, or would substantially impair or impede their ability to protect
21 their interests; and
- 22 c. Defendants have acted or refused to act on grounds generally applicable to
23 the Class, and/or general public, thereby making appropriate final and
24 injunctive relief with respect to the Classes as a whole.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay All Overtime and/or Double Time Wages**

3 **Violation of Labor Code §§510 and 1194; IWC Wage Order No. 1-2001**

4 (Against all Defendants)

5 41. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 paragraphs 1 through 40 of this Complaint.

7 42. Plaintiff and the Class members herein were and are employed and scheduled as
8 a matter of established company policy to work and in fact worked as non-exempt hourly
9 employees in excess of eight (8) hours per day and/or in excess of eighty (80) hour per pay
10 period. Defendants employed and scheduled Plaintiff and the Class members without providing
11 overtime compensation for such excess hours worked in violation of Labor Code §§510, 511,
12 and 1194 and the relevant California Industrial Welfare Commission (IWC) orders. Plaintiff is
13 informed, believes, and thereon alleges that Defendants always had a written and verbal
14 agreement to pay overtime at time and one half for all hours worked in excess of eight (8) per
15 day and/or eighty (80) hours per pay period.

16 43. Labor Code §510 mandates: “Eight hours of labor constitutes a day's work. Any
17 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
18 workweek and the first eight hours worked on the seventh day of work in any one workweek
19 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
20 an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no
21 less than twice the regular rate of pay for an employee. In addition, any work in excess of eight
22 hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
23 the regular rate of pay of an employee. Nothing in this section requires an employer to combine
24 more than one rate of overtime compensation in order to calculate the amount to be paid to an
25 employee for any hour of overtime work.” The California overtime requirement and wage
26 requirement are non-waivable rights pursuant to LC §219.

27 44. Section 3(a)(1) of Wage Order No. 1-2001 (“WO 1-01”) mandates that employers
28 pay one and one-half times the employees’ regular rate of pay for employees who work more

1 than eight hours in a day or forty hours in a week and two times their regular rate of pay for any
2 work in excess of twelve hours in one day.

3 45. Labor Code §1194(a) states: “Notwithstanding any agreement to work for a lesser
4 wage, any employee receiving less than the legal minimum wage or the legal overtime
5 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
6 of the full amount of this minimum wage or overtime compensation, including interest thereon,
7 reasonable attorney’s fees, and costs of suit.”

8 46. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for
9 overtime wages directly against the employer without first filing a claim with the Division of
10 Labor Standards Enforcement (“DLSE”) and may recover such wages, together with interest
11 thereon, penalties, attorneys’ fees and costs. Further, pursuant to Labor Code §1198, it is
12 unlawful to employ person for longer than the hours set by the IWC or under conditions
13 prohibited by the applicable IWC Wage Orders. WO 1-01, as amended, applies to Plaintiff.

14 47. However, Defendants have failed and refused to pay Plaintiff and the class
15 members overtime compensation for all overtime hours worked in excess of eight (8) hours per
16 day as required by LC §§510, 1194 and the applicable Wage Orders. Plaintiff is informed and
17 believes and based thereon alleges that the obligations and responsibilities of the class employees
18 are irrelevant because Plaintiff and all other similarly situated employees were subjected to
19 Defendants’ unlawful pay plans and its failure to pay daily overtime based on the regular rate of
20 pay for all overtime and/or double time hours worked in excess of eight (8) in a workday by
21 Plaintiff and the class members.

22 48. Defendants, and each of them, consistently administered a corporate policy which
23 required Plaintiff and the Class members to work overtime without proper premium overtime
24 and/or double time pay based on the regular rate of pay. Accordingly, Plaintiff and the Class
25 members were and are entitled to overtime compensation, under California law, based on the
26 appropriate regular rate of pay. Defendants have failed to properly include items of remuneration
27 when determining Plaintiff’s and the Class Members’ regular rate, this includes but is not limited
28 to bonuses and GTL pay.

1 49. Plaintiff and the class members have been deprived of rightfully earned overtime
2 compensation as a direct and proximate result of Defendants' common policies, practices, and
3 refusal to pay the full amount of compensation earned for all overtime hours worked.

4 50. Plaintiff, and the class, are entitled to and seek the full amount of all earned unpaid
5 overtime pay, attorneys' fees and costs, and interest pursuant to LC §1194 in an amount to be
6 determined at trial.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **Violation of Labor Code §§226.7, 512, & IWC Wage Order No. 1-2001**

10 (Against all Defendants)

11 51. Plaintiff restates and incorporates by reference each and every allegation
12 contained in paragraphs 1 through 40, inclusive, as though fully set forth herein.

13 52. Labor Code §226.7 requires an employer to pay one additional hour of
14 compensation, at the regular rate of pay, per day for each meal period the employer fails to
15 provide pursuant to the Labor Code and/or applicable Wage Order. Plaintiff alleges that
16 Defendants failed to provide legally compliant meal periods to Plaintiff and the Class members;
17 in addition to impeding, discouraging, and/or dissuading employees from taking legally
18 compliant meal periods. Employees are entitled to a meal period of at least thirty (30) minutes
19 per five (5) hours work period. Plaintiff and the Class members consistently worked over five
20 (5) hours or ten (10) hours in a shift without the requisite, timely, number of meal periods due to
21 Defendants' policy of discouraging, dissuading and/or impeding Plaintiff from taking meal
22 periods. Defendants further failed to obtain legally compliant meal period waivers for shifts
23 lasting longer than 10 hours. Pursuant to the Code, Plaintiff was entitled to a meal period of not
24 less than thirty (30) minutes prior to exceeding five (5) hours of work and a second meal period
25 for hours worked over ten (10) in a day.

26 53. Pursuant to Labor Code §512 and the applicable Wage Order, employees are
27 entitled to a meal period of at least thirty (30) minutes per five (5) hour work period.

28 54. Section 11 of WO 1-01 applies to Plaintiff and the Class member, and provides,

1 in pertinent part, that if an employer fails to provide an employee a legally compliant meal period
2 in accordance with the applicable provisions of this Order, the employer shall pay the employee
3 one hour of pay at the employee's regular rate of compensation for each workday that the meal
4 period was not provided.

5 55. During the relevant time period, Defendants failed to authorize and permit
6 uninterrupted meal breaks without exemption. Plaintiff and the Class were routinely required to
7 work 10-hour shifts without Defendants providing two (2) timely, uninterrupted meal breaks at
8 the direction of Defendants and/or with Defendants knowledge or acquiescence.

9 56. Defendants failed to provide, impeded and/or discouraged Plaintiff and the Class
10 from taking timely meal breaks of not less than thirty (30) minutes as required by the Labor
11 Code, and WO 1-01 §11. This includes a first meal period prior to the fifth hour of work and a
12 second meal period prior to the tenth hour of work.

13 57. By its actions in requiring Plaintiff and the Class to work through meal periods
14 and/or its failure to relieve Plaintiff and the Class of their duties for off-duty meal periods,
15 Defendants violated California Labor Code §226.7 and §11 of IWC Wage Order No.1-2001, and
16 are liable to Plaintiff and the Class.

17 58. Pursuant to Labor Code §226.7, Plaintiff and the Class are entitled to damages in
18 an amount equal to one (1) hour of pay at no less than the regular rate of compensation per missed
19 meal break per day, in a sum to be proven at trial.

20 59. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
21 Members seek recover of pre-judgment interest on all amounts recovered herein.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REST PERIODS**

24 **Violation of Labor Code §§226.7, 512, & IWC Wage Order No. 1-2001**

25 (Against all Defendants)

26 60. Plaintiff restates and incorporates by reference each and every allegation
27 contained in paragraphs 1 through 40, inclusive, as though fully set forth herein.

28 61. Labor Code §226.7(b) provides that "An employer shall not require an employee

1 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
2 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
3 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

4 62. Labor Code §516 provides that the Industrial Welfare Commission “may adopt
5 or amend working condition orders with respect to break periods, meal periods, and days of rest
6 for any workers in California consistent with the health and welfare of those workers.”

7 63. Section §12 of the IWC Wage Order No. 1-2001 states: “Every employer shall
8 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
9 the middle of each work period. The authorized rest period time shall be based on the total hours
10 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
11 thereof. However, a rest period need not be authorized for employees whose total daily work
12 time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as
13 hours worked for which there shall be no deduction from wages.”

14 64. Labor Code §226.7(b) and Section 12(B) of the Wage Order require an employer
15 to pay one additional hour of compensation, at the regular rate of pay, per day for each rest period
16 the employer failed to provide pursuant to the Labor Code and/or applicable Wage Order.

17 65. Plaintiff and the Class members worked over four (4) hours per shift and/or over
18 ten (10) hours per shift.

19 66. Plaintiff and the Class members were entitled to a non-captive, duty-free, paid
20 rest period of not less than ten (10) minutes for every four hours worked or major fraction thereof.

21 67. During the relevant time period, Defendants failed to provide the requisite
22 number of legally compliant non-captive ten (10) minute paid rest periods to Plaintiff and the
23 Class members.

24 68. As such, as a matter of Defendants’ established company policy, Defendants
25 failed to authorize and permit all required paid rest periods established by Labor Code §§226.7
26 and 516 and Section 12 of the applicable Wage Order.

27 69. As a result of the unlawful acts of Defendants, Plaintiff and the Class members
28 have been deprived of legally compliant paid rest breaks and are entitled to recover damages

1 under Labor Code §226.7(b) and §12 of IWC Wage Order No. 1-2001 in the amount of one
2 additional hour of compensation at their regular rate of pay for each day a paid rest break was
3 not provided.

4 70. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
5 Members seek recover of pre-judgment interest on all amounts recovered herein.

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7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

9 **Violation of Labor Code §226**

10 (Against all Defendants)

11 71. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
12 paragraphs 1 through 40 of this Complaint.

13 72. California Labor Code §226 provides:

14 (a) Every employer shall, semimonthly or at the time of each payment of wages,
15 furnish each of his or her employees, either as a detachable part of the check, draft,
16 or voucher paying the employee's wages, or separately when wages are paid by
17 personal check or cash, an accurate itemized statement in writing showing (1) gross
18 wages earned, (2) total hours worked by the employee, except for any employee
19 whose compensation is solely based on a salary and who is exempt from payment
20 of overtime under subdivision (a) of Section 515 or any applicable order of the
21 Industrial Welfare Commission, (3) the number of piece-rate units earned and any
22 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
23 provided that all deductions made on written orders of the employee may be
24 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
25 the period for which the employee is paid, (7) the name of the employee and only
26 the last four digits of his or her social security number or an employee identification
27 number other than a social security number, (8) the name and address of the legal
28 entity that is the employer..., and (9) all applicable hourly rates in effect during the
pay period and the corresponding number of hours worked at each hourly rate by
the employee...

25 73. Section 7(A) of the Wage Order requires accurate information pertaining to total
26 wages paid each payroll period, total hours worked in the payroll period and applicable rates of
27 pay, and incentive plan formula provided to the employees.

28 74. Labor Code §226(e) provides that an employee is entitled to recover the greater

1 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226
2 occurs and one hundred dollars (\$100) for each subsequent pay period not to exceed an aggregate
3 penalty of four thousand dollars (\$4,000), as well as an award of costs and reasonable attorneys'
4 fees, for all pay periods in which the employer knowingly and intentionally failed to provide
5 timely and accurate itemized statements to the employees.

6 75. At all material times, Defendants knowingly and intentionally failed to provide
7 Plaintiff and the Class members with wage statements reflecting the accurate total hours worked,
8 gross wages earned, net wages earned, the applicable hourly rates at the corresponding hours
9 worked, and/or list the meal and rest period premium payment on the wage statement.

10 76. Plaintiff and the Class members suffered injury as a result of Defendants'
11 knowing and intentional failure to provide accurate itemized wage statements as Plaintiff and
12 the Class member were owed but not paid premium compensation for all premium hours worked
13 and premium payments for rest and meal period violations which were not reflected on the wage
14 statements. Plaintiff and the Class members suffered injury as a reasonable person could not
15 promptly and easily determine from the wage statements alone the accurate amount of gross
16 wages, total hours worked, applicable hourly rates at the corresponding hours worked, the net
17 wages earned for the pay period and/or the number of rest period premium payments on the wage
18 statements.

19 77. Plaintiff and the Class members are entitled to damages of statutory penalties
20 pursuant to Labor Code §226(e) for these violations, in an amount to be determined at trial.

21 78. Plaintiff and the Class members are entitled to and seek costs and reasonable
22 attorneys' fees pursuant to Labor Code §226(e).

23 79. Plaintiff further seeks injunctive relief and reasonable attorneys' fees and costs
24 pursuant to Labor Code §226(h).

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

3 **Violation of Labor Code §203**

4 (Against all Defendants)

5 80. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 paragraphs 1 through 40 of this Complaint.

7 81. Plaintiff and the Class members whose employment ended with Defendants
8 during the relevant time period were entitled to be promptly paid all earned and unpaid wages at
9 the time of termination, as required pursuant to Labor Code §§201 and 202, *et seq.* Defendants
10 refused and/or intentionally failed to promptly compensate Plaintiff and the other Class members
11 all earned overtime wages and/or rest period premium pay at the time of separation. Based on
12 this Plaintiff and the Class members seek and are entitled to damages in the form of statutory
13 waiting time penalties pursuant to LC §203.

14 82. Plaintiff and the Class members whose employment terminated during the
15 relevant time period were employees of Defendants covered by Labor Code §203 whose
16 employment ended with Defendants.

17 83. Accordingly, pursuant to Labor Code §203, Plaintiff and the Class members are
18 entitled to waiting time penalties at an amount to be proven at trial.

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **Violation of Business and Professions Code §§17200, *et seq.***

22 (Against all Defendants)

23 84. Plaintiff re-alleges and incorporates by reference each and every one of the
24 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
25 forth herein.

26 85. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
27 least since four (4) years before the filing of this action, Defendants have engaged in a pattern
28 and practice of acts of unfair competition in violation of B&PC §17200, including the practices

1 alleged herein.

2 86. Defendants, and each of them, are “persons” as defined by Business and
3 Professions Code §17201.

4 87. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff
5 sues on her own behalf and on behalf of the current, former, and future employees of the
6 Defendants that were required to work overtime and double time hours without receiving the full
7 amount of overtime and double time compensation and required to work shifts without legally
8 compliant meal and rest periods and as parties harmed by Defendants unfair business practices.

9 88. Plaintiff and the Class members suffered injuries-in-fact and have lost money as
10 a result of the Defendants’ unfair competition alleged herein.

11 **UNLAWFUL BUSINESS PRACTICES**

12 89. Defendants previously or continue to engage in unlawful, unfair, and/or
13 fraudulent business practices, as alleged in this Complaint, in violation of California’s B&PC
14 §17200 *et seq.* by:

- 15 a. Failing and refusing to pay Plaintiff and the Class members the full amount of
16 overtime and/or double time compensation in violation of Labor Code §§510,
17 1194, &1197 and IWC Wage Order No. 1-2001; and
18 b. Failing and refusing to provide Plaintiff and the Class members legally compliant
19 non-captive, paid, ten-minute rest periods or premium payments, at the regular
20 rate of pay, in lieu thereof in violation of Labor Code §§226.7, 512 and IWC
21 Wage Order No. 1-2001; and
22 c. Failing and refusing to provide Plaintiff and the Class members legally compliant,
23 uninterrupted, meal breaks or premium payments, at the regular rate of pay, in
24 lieu thereof in violation of Labor Code §§226.7, 512 and IWC Wage Order No.
25 1-2001

26 90. All of these allegations constitute unfair business practices and/or unlawful
27 business practices in violation of California B&PC §17200, *et seq.*

28 91. Defendants have avoided payment of wages, overtime wages and other benefits

1 as required by the California Labor Code, the California Code of Regulations and applicable
2 IWC Wage Orders. As a result of Defendants' unfair business practices, Defendants have reaped
3 unfair benefits and illegal profits at the expense of Plaintiff, the Class members, and others
4 similarly situated, and the members of the public. Defendants should be made to disgorge their
5 ill-gotten gains and to restore them to the Class, including Plaintiff.

6 92. Plaintiff and the Class members seek full restitution of said monies, as necessary
7 and according to proof, to restore any and all monies withheld and/or acquired by Defendants by
8 means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff
9 seeks, on behalf of all current and former employees of Defendants, restitution of monies
10 retained by Defendants. Plaintiff further seeks, on behalf of themselves and the Class members,
11 the appointment of a receiver, as necessary, to establish the total restitutionary relief from
12 Defendants. The restitution includes all wages withheld by Defendants as a result of the unfair,
13 unlawful, and/or fraudulent business practices; including interest thereon. Absent a statutory
14 provision specifically governing the type of claim at issue, the prejudgment interest rate is 10
15 percent. The acts complained of herein occurred, at least in part, within the last four (4) years
16 preceding the filing of the Complaint.

17 93. Plaintiffs is informed and believe and thereon allege that at all times herein
18 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
19 prohibited by California B&PC §17200, thereby depriving their employees and the Class
20 members, the minimum working condition, standards and conditions due to them under the
21 California labor laws and Industrial Welfare commission wage orders as specifically described
22 herein. Plaintiff further seeks an order requiring Defendants to identify by full name, telephone
23 number, and last known address employees who worked or still work for Defendants for the
24 Class members from four (4) years preceding the filing of the original Complaint through the
25 date of class certification. Plaintiff further seeks an order requiring Defendants to timely pay
26 restitution to all current and former employees, including back wages, and interest.

27 94. By and through its unfair, unlawful, and/or fraudulent business practices and acts
28 described herein, Defendants have obtained valuable services from Plaintiff and all persons

1 similarly situated, and has deprived Plaintiff and all persons similarly situated of valuable rights
2 and benefits guaranteed by law, all to their detriment.

3 95. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
4 to and do seek such relief as may be necessary to restore to them the money and property which
5 Defendants have acquired, or of which Plaintiffs and class members have been deprived by mean
6 of the herein described unfair, unlawful, and/or fraudulent business practices.

7 96. Plaintiff, and all persons similarly situated, and all persons in interest, are further
8 entitled to and do seek a declaration that the above described business practices are unfair,
9 unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein
10 described unfair, unlawful, and/or fraudulent business practices.

11 97. Plaintiff and the Class members request attorney's fees and costs pursuant to
12 Code of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a
13 large class and the public.

14 **SEVENTH CAUSE OF ACTION**

15 **PRIVATE ATTORNEY GENERAL ACT**

16 **Violation of Labor Code §§2698, *et seq.***

17 (Against all Defendants)

18 98. Plaintiff on behalf of himself and on behalf of all other aggrieved employees
19 herein re-alleges and incorporates each and every one of the allegations contained in the
20 preceding paragraphs as if fully set forth herein.

21 99. Labor Code §§2698-2699, the Labor Code Private Attorney General Act of 2004,
22 provides for a civil penalty to be assessed and collected by the Labor and Workforce
23 Development Agency (LWDA), or any of its departments, divisions, commissions, boards,
24 agencies or employees for a violation of the Labor Code, may be recovered through a civil action
25 by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other
26 current or former employees.

27 100. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
28 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is

1 authorized to exercise the same discretion, subject to the same limitations and conditions to
2 assess a civil penalty.

3 101. Plaintiff and Defendant's hourly, non-exempt employees who performed
4 manufacturing and production services for Defendant in California, at any point during the
5 period of one year preceding the filing of this action to the present, are "aggrieved employees"
6 as defined by Labor Code §2699, in that they are all current or former employees of Defendant,
7 and one or more of the alleged violations was committed against them.

8 102. Plaintiff gave written notice electronically to the LWDA, and by certified mail to
9 Defendant of the specific provisions of this code alleged to have been violated, including the
10 facts and theories to support the alleged violations as required by Labor Code §2699.3. More
11 than 65 days have lapsed since notice to the LWDA and the LWDA has not indicated that it
12 intends to investigate Defendant's Labor Code violations. Accordingly, Plaintiff may commence
13 a civil action to recover civil penalties for himself and other current and former employees under
14 Labor Code §2699 pursuant to §2699.3.

15 103. Plaintiff asserts all the claims in this Complaint against Defendant, individually
16 and on behalf of all aggrieved employees in their capacity as private attorney general and seeks
17 all applicable civil penalties available under the Labor Code.

18 104. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of all
19 aggrieved employees, request and seek to recover from the Defendant; overtime and double time
20 wages at the regular rate of pay, meal period premiums, rest period premiums, waiting time
21 penalties, and wage statement violations according to proof. Plaintiffs are further entitled to
22 attorneys' fees and costs pursuant to Labor Code §2699(g)(1), as well as all civil penalties,
23 including, but not limited to:

- 24 1) Penalties under Code of Regulations, Title 8 §11090 in the amount of \$50 for each
25 aggrieved employee per pay period for the initial violation, and \$200 for each
26 aggrieved employee per pay period for each subsequent violation;
27 2) Penalties under Labor Code §558, in addition to and entirely independent and apart
28 from other penalties provided under the Labor Code, in the amount of \$50 for each

1 underpaid aggrieved employee for each pay period the aggrieved employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages, and \$100
3 for each subsequent violation for each underpaid employee for each pay period for
4 which the employee was underpaid in addition to an amount sufficient to recover
5 underpaid wages;

6 3) Penalties under Labor Code §1197.1, in addition to and entirely independent and
7 apart from other penalties provided in the Labor Code, for any initial violation that is
8 intentionally committed, \$100 for each underpaid employee for each pay period for
9 which the employee is underpaid; for each subsequent violation for the same specific
10 offense, \$200 for each underpaid employee for each pay period for which the
11 employee is underpaid regardless of whether the initial violation is intentionally
12 committed; and

13 4) Penalties under Labor Code §2699(f), in addition to and entirely independent and
14 apart from other penalties provided in the Labor Code and for Labor Code violations
15 without a specific civil penalty, in the amount of \$100 for each aggrieved employee
16 per pay period for each violation, and \$200 for each aggrieved employee per pay
17 period for each subsequent violation;

18 105. Any and all additional civil penalties and sums as provided by the Labor Code
19 and/or other statutes.

20 106. Plaintiff seeks and is entitled to have 75% of all penalties obtained be allocated
21 to the LWDA and 25% to aggrieved employees.

22 107. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and
23 costs pursuant to Labor Code §§2699(g)(1).

24 **IV. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays judgment as follows:

- 26 1. An order that the action be certified as a class action;
27 2. An order that Plaintiff be appointed class representatives;
28

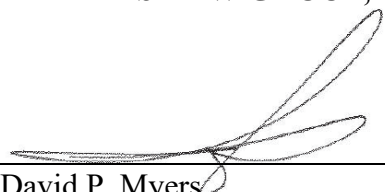
3. An order that counsel for Plaintiff be appointed class counsel;
4. An order requiring Defendants to identify, by name, email address, address and telephone number all current and former hourly manufacturing and production non-exempt employees of Defendants for the period of June 7, 2019 through the date of class certification;
5. For all unpaid wages due to Plaintiff and each Class member in amounts to be proven at trial;
6. For the full amount of unpaid overtime and/or double time wages due Plaintiff and each Class member pursuant to Labor Code §1194;
7. For recovery as authorized by Labor Code §226(e);
8. For restitution of all unpaid wages due Plaintiff and each Class member;
9. For all applicable statutory penalties, in amounts to be proven at trial;
10. For an award of waiting time penalties pursuant to section 203 of the California Labor Code, in amounts to be proven at trial;
11. For general damages including compensatory damages according to proof;
12. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as well as Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
13. For all applicable interest on damages, wages, and penalties due;
14. For injunctive relief to prevent further violations of the California Labor Code;
15. For declaratory relief that Defendants engaged in unfair practices;
16. For declaratory relief that Defendants violated Labor Code §§201-203, 226, 226.7, 510, 512, 1194, and 1197;
17. For restitution of all moneys due to Plaintiff and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
18. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant rest break was not provided;

- 1 19. For one (1) hour of pay at each of the employees' regular rate of compensation for
2 each workday that a legally compliant meal break was not provided
- 3 20. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and
4 (h), 1194(a), 2269(g)(1), Code of Civil Procedure §1021.5, *et seq.*, and all other
5 applicable law, and;
- 6 21. On behalf of Plaintiff and all other aggrieved employees and the LWDA, for all civil
7 penalties authorized by LC §2699, including but not limited to:
- 8 a) For civil penalties pursuant to LC §558 as follows:
- 9 i. For any initial violation, fifty dollars (\$50) for each underpaid
10 employee for each pay period for which the employee was
11 underpaid in addition to an amount sufficient to recover underpaid
12 wages;
- 13 ii. For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee
15 was underpaid in addition to an amount sufficient to recover
16 underpaid wages;
- 17 b) For civil penalties per Code of Regulations, Title 8 §11090 in the amount of \$50
18 for each aggrieved employee per pay period for the initial violation, and \$200 for
19 each aggrieved employee per pay period for each subsequent violation;
- 20 c) For civil penalties per Labor Code §1197.1, in the amount of:
- 21 i. \$100 for each underpaid employee for each initial pay period for
22 which the employee was intentionally underpaid;
- 23 ii. \$200 for each underpaid employee for each subsequent pay period
24 for which the employee is underpaid regardless of whether the initial
25 violation is intentionally committed; and
- 26 22. For civil penalties under LC §2699(f), in addition to and entirely independent and
27 apart from other penalties provided in the Labor Code and for Labor Code violations
28 without a specific civil penalty, in the amount of \$100 for each aggrieved employee

1 per pay period for each violation, and \$200 for each aggrieved employee per pay
2 period for each subsequent violation, and;
3 23. For all such other and further relief that the Court may deem just and proper.
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5
6 Dated: 9/4/2023

THE MYERS LAW GROUP, A.P.C.

7
8
9 By: 

10 David P. Myers

11 Jason Hatcher

12 Andriana N. Bravo

13 Attorneys for Plaintiff Francisco Garcia and all
14 others similarly situated.
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PROOF OF SERVICE

I am employed in the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730.

On September 5, 2023, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT** by serving interested parties in this action by addressed as follows:

Kate S. Gold, Esq.
kgold@proskauer.com
Philippe A. Lebel, Esq.
plebel@proskauer.com
Dixie M. Morrison, Esq.
dmorrison@proskauer.com
PROSKAUER ROSE LLP
2029 Century Park East, Ste. 2400
Los Angeles, CA 90067-3010

I am “readily familiar” with the firm’s practice of services of process. Under that practice, this document would be deposited:

(BY MAIL): with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

(BY UPS) Overnight Delivery with the envelope placed in or with a facility maintained by the overnight delivery carrier with fees paid for or provided for.

(BY PERSONAL SERVICE) I caused such envelope(s) to be personally served by messenger to the above addresses(s)
 X
(BY ELECTRONIC SERVICE) I served the document(s) described above by emailing to the person(s) at the electronic address(es) listed above. I did not receive any electronic message or indication that the transmission was unsuccessful. My email address is ymedina@myerslawgroup.com

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 5, 2023 at Rancho Cucamonga, California.



Yvonne Medina