

1 Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
2 Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
3 Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
4 Capstone Law APC
1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 556-4811
6 Facsimile: (310) 943-0396

7 Attorneys for Plaintiff Michael Saephan

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF CONTRA COSTA

11 MICHAEL SAEPHAN, as an aggrieved
employee pursuant to the Private Attorneys
12 General Act ("PAGA"), on behalf of the
State of California and other non-party
13 Aggrieved Employees,

14 Plaintiff,

15 vs.

16 DREISBACH ENTERPRISES, INC., a
California corporation; and DOES 1
17 through 10, inclusive,

18 Defendants.

Case No.: C23-01193

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Michael Saephan, as an aggrieved employee and on behalf the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action brought under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 current and former employees who worked for Defendants in California as non-exempt,
8 hourly paid employees and received at least one wage statement and against whom one or
9 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
10 provision regulating hours and days of work in the applicable Industrial Welfare Commission
11 (“IWC”) Wage Order were committed, as set forth in this complaint, as set forth in this
12 complaint, at any time between one year prior to the filing of the pre-filing written notice to
13 the Labor and Workforce Development Agency (“LWDA”) in this case on June 7, 2023, until
14 judgment (“non-party Aggrieved Employees”). Plaintiff’s share of civil penalties sought in
15 this action does not exceed \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over Defendants because Defendants are either
20 citizens of California, have sufficient minimum contacts in California, or otherwise
21 intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play
23 and substantial justice. There is no basis for federal diversity jurisdiction in this action given
24 that the State of California, as the real party in interest in this action, is not a “citizen” for
25 purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118,
26 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to
27 satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
28 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil

1 penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons within the
3 County of Contra Costa, and have violated the requirements of the California Labor Code and
4 applicable Wage Order in this county which give rise to the penalties sought in this action.
5 Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the
6 California Labor Code and applicable IWC Wage Order in at least one location within the
7 County of Contra Costa, including Defendants' facility in Richmond (3151 Regatta
8 Boulevard, Richmond, California 94804). Pursuant to California Civil Code of Procedure
9 section 393, venue is proper for the recovery of a penalty imposed by statute in the county in
10 which the cause, or some part of the cause, arose. Because Defendants have employees in
11 Contra Costa County and Plaintiff could bring an action under PAGA in any county in which
12 an aggrieved employee worked and Labor Code violations occurred, venue is proper.
13 *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th
14 1069 (2021).

15 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
16 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
17 attorneys general their current or former employers for various civil penalties for violations of
18 various provisions in the California Labor Code.

19 THE PARTIES

20 6. Plaintiff Michael Saephan is a resident of Oakland, in Alameda County,
21 California. Defendants employed Plaintiff as an hourly paid, non-exempt Shipping and
22 Receiving Supervisor from approximately August 2003 to February 2023. During his
23 employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days or
24 more per week. Plaintiff's primary job duties included, without limitation, checking in
25 delivery drivers and cargo containers, receiving and auditing commodities, completing data
26 entry, and scheduling deliveries.

27 7. DREISBACH ENTERPRISES, INC. was and is, upon information and belief, a
28 California corporation, and at all times hereinafter mentioned, an employer whose employees

are engaged throughout this county and the State of California.

8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of DREISBACH ENTERPRISES, INC. at all relevant times.

10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, DREISBACH ENTERPRISES, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “DREISBACH”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

11. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

12. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

PAGA REPRESENTATIVE ALLEGATIONS

13. Defendants provide refrigerated warehousing and logistics services in Northern California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Oakland, California, which is responsible for the recruiting and hiring of new employees, and communicating and

1 implementing Defendants' company-wide policies, including timekeeping policies and meal
2 and rest period policies, to employees throughout California.

3 14. In particular, Plaintiff and other non-party Aggrieved Employees, on
4 information and belief, received the same standardized documents and/or written policies.
5 Upon information and belief, the usage of standardized documents and/or written policies,
6 including new-hire documents, indicate that Defendants dictated policies at the corporate level
7 and implemented them company-wide, regardless of their employees' assigned locations or
8 positions. Upon information and belief, Defendants set forth uniform policies and procedures
9 in several documents provided at an employee's time of hire.

10 15. Upon information and belief, Defendants maintain a centralized Payroll
11 department at their company headquarters in Oakland, California, which processes payroll for
12 all non-exempt, hourly paid employees working for Defendants at their various locations in
13 California, including Plaintiff and other non-party Aggrieved Employees. Based upon
14 information and belief, Defendants issue the same formatted wage statements to all non-
15 exempt, hourly paid employees in California, irrespective of their work locations. Upon
16 information and belief, Defendants process payroll for departing employees in the same
17 manner throughout the State of California, regardless of the manner in which each employee's
18 employment ends.

19 16. Defendants continue to employ non-exempt or hourly paid employees in
20 California.

21 17. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
23 and advisors knowledgeable about California labor and wage law, employment and personnel
24 practices, and about the requirements of California law.

25 18. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
26 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
27 were not recorded.

28 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive certain wages for overtime compensation and that they were not receiving certain
3 wages for overtime compensation.

4 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 receive at least minimum wages for compensation and that they were not receiving at least
7 minimum wages for work that was required to be done off-the-clock. In violation of the
8 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
9 least minimum wages for work done off-the-clock.

10 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
13 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
14 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
15 other non-party Aggrieved Employees were not provided with all meal periods or payment of
16 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
17 uninterrupted, thirty (30) minute meal period.

18 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
21 payment of one (1) additional hour of pay at their regular rates of pay when they were not
22 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
23 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
24 provided with payment of one (1) additional hour of pay at their regular rates of pay when
25 they were not authorized and permitted to take a compliant rest period.

26 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive complete and accurate wage statements in accordance with California law. In

1 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
2 were not provided complete and accurate wage statements.

3 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain accurate and complete payroll records in
5 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
6 knowingly, and intentionally failed to do so.

7 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of all wages earned upon termination of employment. In violation of the
10 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
11 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
12 and/or meal and rest period premiums, within permissible time periods.

13 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 timely payment of wages during their employment. In violation of the California Labor Code,
16 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
17 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
18 premiums, within permissible time periods.

19 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 receive full reimbursement for all business-related expenses and costs they incurred during the
22 course and scope of their employment and that they did not receive full reimbursement of
23 applicable business-related expenses and costs incurred.

24 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
27 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
28 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees

1 that they were properly denied wages, all in order to increase Defendants' profits.

2 29. At all times herein set forth, PAGA provides that any provision of law under
3 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
4 assessed and collected by the LWDA for violations of the California Labor Code and
5 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
6 civil action brought on behalf of themselves and other current or former employees pursuant
7 to procedures outlined in California Labor Code section 2699.3

8 30. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
9 person who was employed by the alleged violator and against whom one or more of the
10 alleged violations was committed."

11 31. Plaintiff and other current and former employees of Defendants are "aggrieved
12 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
13 or former employees and one or more of the alleged violations were committed against them.

14 32. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
15 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
16 following requirements have been met:

17 (a) The aggrieved employee or representative shall give written notice by
18 online filing with the LWDA and by certified mail to the employer of
19 the specific provisions of the California Labor Code alleged to have
20 been violated, including the facts and theories to support the alleged
21 violation.

22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(a) and any employer response to that notice shall be
24 accompanied by a filing fee of seventy-five dollars (\$75).

25 (c) The LWDA shall notify the employer and the aggrieved employee or
26 representative by certified mail that it does not intend to investigate the
27 alleged violation ("LWDA Notice") within sixty (60) calendar days of
28 the postmark date of the aggrieved employee's notice. Upon receipt of

1 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
2 (65) calendar days of the postmark date of the aggrieved employee's
3 notice, the aggrieved employee may commence a civil action pursuant
4 to California Labor Code section 2699 to recover civil penalties.

5 33. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
6 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
7 provision other than those listed in Section 2699.5 after the following requirements have been
8 met:

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing with the LWDA and by certified mail to the employer of
11 the specific provisions of the California Labor Code alleged to have
12 been violated (other than those listed in Section 2699.5), including the
13 facts and theories to support the alleged violation.
- 14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice sent by the aggrieved
19 employee or representative. The employer shall give written notice
20 within that period of time by certified mail to the aggrieved employee or
21 representative and by online filing with the LWDA if the alleged
22 violation is cured, including a description of actions taken, and no civil
23 action pursuant to Section 2699 may commence. If the alleged violation
24 is not cured within the 33-day period, the aggrieved employee may
25 commence a civil action pursuant to Section 2699.

26 34. On June 7, 2023, Plaintiff provided written notice by online filing to the
27 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
28 Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
2 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
3 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
4 Plaintiff PAGA Case Number LWDA-CM-960402-23. A true and correct copy of Plaintiff's
5 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

6 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff
7 sent the notice described above to the LWDA, and the LWDA has not responded that it
8 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

9 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
10 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
11 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
12 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

13 37. Labor Code section 558(a) provides "[a]ny employer or other person acting on
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the Industrial Welfare
16 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was
18 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was underpaid" Labor
20 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
21 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
22 as a private attorney general, seeks assessment and collection of civil penalties under Labor
23 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
24 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
25 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
26 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
27 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
28 applicable IWC Wage Order.

38. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth above.

39. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

41. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

42. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Labor Code section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

43. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

1 Wage Order for Defendants' failure to compensate Plaintiff and other
2 non-party Aggrieved Employees with all required overtime pay, as set
3 forth below;

4 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
5 applicable IWC Wage Order for Defendants' failure to compensate
6 Plaintiff and other non-party Aggrieved Employees with at least
7 minimum wages for all hours worked, as set forth below;

8 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
10 and other non-party Aggrieved Employees with meal periods, as set
11 forth below;

12 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to authorize and
14 permit Plaintiff and other non-party Aggrieved Employees to take rest
15 periods, set forth below;

16 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
17 IWC Wage Order for failure to provide accurate and complete wage
18 statements to Plaintiff and other non-party Aggrieved Employees, as set
19 forth below;

20 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
21 IWC Wage Order for failure to maintain payroll records, set forth below;

22 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
23 wages upon termination, set forth below;

24 (h) Violation of Labor Code section 204 for failure to pay all earned wages
25 during employment, as set forth below; and

26 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
27 and other non-party Aggrieved Employees for all business expenses
28 necessarily incurred, set forth below.

1 **FAILURE TO PAY OVERTIME**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 44. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
5 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
6 shall be the . . . standard conditions of labor for employees. The employment of any employee
7 . . . under conditions of labor prohibited by the order is unlawful.”

8 45. California Labor Code section 1198 and the applicable IWC Wage Order
9 provide that it is unlawful to employ persons without compensating them at a rate of pay
10 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
11 number of hours worked by the person on a daily or weekly basis.

12 46. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
16 (40) hours in a workweek.

17 47. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
19 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
20 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
21 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

22 48. California Labor Code section 510 codifies the right to overtime compensation
23 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
24 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
25 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
26 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
27 in a day on the seventh (7th) day of work.

28 49. During the relevant time period, Defendants willfully failed to pay all overtime

1 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
2 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
3 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
4 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
5 not recorded.

6 50. First, Defendants had, and continue to have, a company-wide policy and/or
7 practice requiring Plaintiff and other non-party Aggrieved Employees to perform various
8 work-related tasks while off-the-clock before and after their shifts and on their days off. For
9 example, before his shifts and on his days off, Defendants required Plaintiff to communicate
10 over the phone with management for 30-60 minutes at a time regarding work-related matters.
11 As a further example, Plaintiff was required to travel for 20-25 minutes between Defendants'
12 facilities to provide additional shift coverage and was not compensated for the time spent
13 traveling from the Oakland facility to the Richmond facility. Additionally, at least twice per
14 month, after Plaintiff had already clocked out from his shift, he would be asked to return to
15 the facility to handle work-related emergencies, which could take about 30 minutes each
16 occurrence. Thus, Defendants failed to track all of the time that employees spent performing
17 work-related tasks outside of their shifts, and Plaintiff and other non-party Aggrieved
18 Employees received no compensation for this time.

19 51. Further, during the relevant period, Defendants implemented, on a company-
20 wide basis, an employer-imposed requirement that Plaintiff and other non-party Aggrieved
21 Employees undergo mandatory COVID-19 health screenings and submit to COVID-19 testing
22 before clocking in for their scheduled shifts. For example, Plaintiff was required to undergo a
23 daily temperature check and fill out a form pertaining to possible symptoms before being
24 permitted to clock in for his shift. Additionally, Plaintiff and other non-party Aggrieved
25 Employees had to submit to COVID-19 testing due to a possible virus exposure in the
26 workplace. For example, on two (2) occasions, Plaintiff had to self-administer a rapid
27 COVID-19 test before he was cleared to enter the facility and clock in for his shift, which took
28 approximately 15 minutes each occurrence. Even though Defendants required these health

1 screenings and testing, Defendants did not provide Plaintiff and other non-party Aggrieved
2 Employees with a mechanism to record this time so they could be compensated for the time
3 spent undergoing the health screenings and testing.

4 52. Second, Defendants had, and continue to have, company-wide policies and/or
5 practices of understaffing their locations while assigning heavy workloads and strict
6 productivity quotas, resulting in a failure to provide Plaintiff and other non-party Aggrieved
7 Employees with adequate meal period coverage. As a result of this lack of meal period
8 coverage, Plaintiff and other non-party Aggrieved Employees were not always afforded
9 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
10 period. Defendants also had a practice of failing to schedule meal periods which, in
11 conjunction with the assignment of heavy workloads and strict productivity quotas, further
12 caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties
13 for compliant meal periods. For example, Plaintiff's meal periods were frequently interrupted
14 for up to 20 minutes by other employees requesting assistance. Further, approximately twice
15 per month, Plaintiff worked through his meal periods to keep up with the demands of work
16 and complete his assigned duties. Defendants did not compensate Plaintiff and other non-
17 party Aggrieved Employees for the time they spent working off the clock during unpaid meal
18 periods.

19 53. Furthermore, on information and belief, because Defendants frowned upon
20 employees accruing meal period penalties, Defendants' management pressured employees to
21 clock out for meal periods, on threat of discipline, to reflect compliant meal periods regardless
22 of whether they had received a compliant meal period or not, in order to limit the meal
23 penalties that Defendants would otherwise owe. Thus, Defendants did not record all hours
24 worked during meal periods, and Plaintiff and other non-party Aggrieved Employees
25 performed work during meal periods for which they were not paid.

26 54. Defendants knew or should have known that, as a result of these company-wide
27 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
28 their assigned duties off-the-clock before and after their shifts and during meal periods, and

1 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
2 and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or
3 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
4 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
5 overtime wages for all of the overtime hours they actually worked.

6 55. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
7 the balance of overtime compensation, as required by California law, violates the provisions
8 of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
9 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
10 558 and/or 2699(a), (f), and (g).

11 **FAILURE TO PAY MINIMUM WAGES**

12 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

13 56. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
14 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
15 to be paid to employees, and the payment of a wage less than the minimum so fixed is
16 unlawful. Compensable work time is defined in IWC Wage Order No. 9-2001 as "the time
17 during which an employee is subject to the control of an employer, and includes all the time
18 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
19 Regs. Tit. 8, § 11090(2)(H) (defining "Hours Worked").

20 57. As set forth above, during the relevant time period, Defendants had a company-
21 wide policy and/or practice requiring Plaintiff and other non-party Aggrieved Employees to
22 perform work-related tasks while off-the-clock before and after their shifts and on their days
23 off, including discussing work-related matters on the phone, traveling to other facilities to
24 cover shifts, addressing work-related emergencies, and undergoing mandatory COVID-19
25 health screenings and testing. Defendants failed to track this time Plaintiff and other non-
26 party Aggrieved Employees spent working off-the-clock, and Plaintiff and other non-party
27 Aggrieved Employees received no compensation for this time.

28 58. Further, as also stated above, due to Defendants' policies and/or practices of

1 understaffing their locations while assigning heavy workloads and strict productivity quotas,
2 and failing to schedule meal periods, Plaintiff and other non-party Aggrieved Employees were
3 impeded from taking all uninterrupted meal periods to which they were entitled and were
4 required to work off-the-clock during meal periods, have their meal periods interrupted,
5 and/or were otherwise not relieved of all duties during unpaid meal periods. Also, as stated,
6 in order to prevent employees from accruing meal period penalties, upon information and
7 belief, Defendants' management pressured employees to record compliant meal periods, upon
8 threat of discipline, even when meal periods were missed, short, and/or interrupted. Thus,
9 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
10 for actual hours worked during unpaid meal periods because these hours were not always
11 correctly recorded.

12 59. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
13 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
14 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
15 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
16 1194, 1197, 1197.1, and 1198.

17 60. As a result, Defendants regularly failed to pay at least minimum wages to
18 Plaintiff and other non-party Aggrieved Employees for all of the hours they worked in
19 violation of California Labor Code sections 1182.12, 1194, 1197, and 1198. Plaintiff and
20 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant
21 to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

24 61. At all relevant times herein set forth, the applicable IWC Wage Order and
25 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
26 non-party Aggrieved Employees' employment by Defendants.

27 62. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is
3 not more than six (6) hours, the meal period may be waived by mutual consent of both the
4 employer and the employee. Under California law, first meal periods must start after no more
5 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 63. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 64. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
10 the applicable IWC Wage Order also require employers to provide a second meal period of
11 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
12 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
13 hours worked is no more than twelve (12) hours, the second meal period may be waived by
14 mutual consent of the employer and the employee only if the first meal period was not waived.

15 65. As stated, during the relevant time period, Defendants had, and continue to
16 have, company-wide policies and/or practices of understaffing while assigning heavy
17 workloads and strict productivity quotas, which resulted in a lack of meal period coverage and
18 prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
19 uninterrupted meal periods to which they were entitled. Further, as also stated, Defendants
20 had a company-wide practice and/or policy of failing to schedule meal periods, which further
21 caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties
22 for compliant meal periods. As a result, Plaintiff and other non-party Aggrieved Employees
23 have had to work through all or part of their meal periods, had their meal periods interrupted,
24 and/or had to wait extended periods of time before taking meal periods. For example,
25 approximately twice per month, Plaintiff missed his meal periods due to the demanding
26 workload and pressure to meet the productivity quotas Defendants' management imposed.
27 Further, about twice per month, Plaintiff took his meal periods late, after having worked in
28 excess of five (5) hours into his shift, in order to complete his assigned duties. Moreover, as

1 stated, Plaintiff's meal periods were occasionally cut short and/or interrupted by other
2 employees asking him for assistance.

3 66. Further, as set forth above, on information and belief, because Defendants
4 frowned upon employees accruing meal period penalties, Defendants' management pressured
5 Plaintiff and other non-party Aggrieved Employees to clock out for meal periods, upon threat
6 of discipline, to reflect compliant meal periods, regardless of whether they had received a
7 compliant meal period or not, in order to strictly limit the meal penalties that would need to be
8 paid by Defendants. For example, Plaintiff was required to clock out for his meal periods to
9 record that he had received compliant meal periods on shifts when he had not, in fact, received
10 these timely, uninterrupted meal periods. Plaintiff and other non-party Aggrieved Employees
11 did not sign valid meal period waivers on days that they were entitled to meal periods and
12 were not relieved of all duties.

13 67. At all times mentioned herein, Defendants knew or should have known that as a
14 result of their policies, Plaintiff and other non-party Aggrieved Employees were not actually
15 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
16 should have known that they did not pay Plaintiff and other non-party Aggrieved Employees
17 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

18 68. Furthermore, Defendants engaged in a company-wide practice and/or policy of
19 not paying all meal period premiums owed when compliant meal periods are not provided.
20 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
21 have not received premium pay for all missed, late, and interrupted meal periods. As a result,
22 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees compliant
23 meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed
24 to pay the full meal period premiums due.

25 69. Defendants' conduct violates the applicable IWC Wage Order, and California
26 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
27 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
28 558 and/or 2699(a), (f), and (g).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

70. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

71. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

72. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

73. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices, including understaffing while assigning heavy workloads and strict productivity quotas, prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty to take rest periods. Defendants also failed to

1 schedule rest periods, which further led to Plaintiff and other non-party Aggrieved Employees
2 not being authorized and permitted to take rest periods.

3 74. Moreover, upon information and belief, Defendants maintained a company-
4 wide on-premises rest period policy, which effectively required that Plaintiff and/or other non-
5 party Aggrieved Employees remain on Defendants' premises during their rest periods.
6 Because Plaintiff and/or other non-party Aggrieved Employees were restricted from leaving
7 the premises during rest periods, they were denied the ability to use their rest periods freely
8 for their own purposes, such as running personal errands. Thus, Defendants effectively
9 maintained control over Plaintiff and/or other non-party Aggrieved Employees during rest
10 periods.

11 75. As a result of Defendants' practices and policies, Plaintiff and other non-party
12 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
13 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
14 were entitled. For example, Plaintiff's first rest periods were frequently interrupted by
15 Defendants' management asking him for information or inquiring about the status of
16 operations. Plaintiff also regularly had to forego his second and/or third rest periods because
17 of the heavy workload and Defendants' failure to schedule rest periods for employees.

18 76. Defendants have also engaged in a systematic, company-wide practice and/or
19 policy of not paying rest period premiums owed when rest periods are not authorized and
20 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
21 Employees have not received premium pay for all missed rest periods. As a result,
22 Defendants denied Plaintiff and other non-party Aggrieved Employees rest periods and failed
23 to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and
24 the applicable IWC Wage Order.

25 77. Defendants' conduct violates the applicable IWC Wage Order and California
26 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
27 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
28 558 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

78. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

79. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

80. Because Defendants did not accurately record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

81. The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period

1 for which employees were paid; failing to list the name of the employee and only the last four
2 digits of his or her social security number or an employee identification number other than a
3 social security number; failing to list the name and address of the legal entity that is the
4 employer; and/or failing to state all hours worked as a result of not recording or stating hours
5 worked off-the-clock.

6 82. California Labor Code section 1174(d) provides that “[e]very person employing
7 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
8 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
9 plants or establishments at which employees are employed, payroll records showing the hours
10 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
11 applicable piece rate paid to, employees employed at the respective plants or
12 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
13 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
14 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
15 as a result of failing to record the off-the-clock hours that they worked.

16 83. California Labor Code section 1198 provides that the maximum hours of work
17 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
18 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
19 employment of any employees for longer hours than those fixed by the order or under
20 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
21 Wage Order, employers are required to keep accurate time records showing when the
22 employee begins and ends each work period. During the relevant time period, Defendants
23 engaged in company-wide practices and/or policies of failing to record actual hours worked,
24 and thereby failed to keep accurate records of work period and meal period start and end times
25 for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198.

26 84. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
27 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
28 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

3 85. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
4 that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
6 her employment, his or her wages shall become due and payable not later than seventy-two
7 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
8 his or her intention to quit, in which case the employee is entitled to his or her wages at the
9 time of quitting.

10 86. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
11 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
12 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
13 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
14 leaving Defendants' employ.

15 87. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
16 who are no longer employed by Defendants their wages earned and unpaid at the time of
17 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
18 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
19 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
20 2699(a), (f), and (g).

21 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

22 **VIOLATION OF LABOR CODE SECTION 204**

23 88. At all times relevant herein set forth, Labor Code section 204 provides that all
24 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
25 days, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
27 the month during which the labor was performed.

28 89. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth (16th) and the last day,
2 inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
4 month.

5 90. At all times relevant herein, Labor Code section 204 provides that all wages
6 earned for labor in excess of the normal work period shall be paid no later than the payday for
7 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
8 204 provides that the requirements of this section are deemed satisfied by the payment of
9 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
10 seven (7) calendar days following the close of the payroll period.

11 91. During the relevant time period, Defendants willfully failed to pay Plaintiff and
12 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
13 wages, minimum wages, and/or meal and rest period premiums, within the time periods
14 specified by California Labor Code section 204.

15 92. Defendants' failure to timely pay Plaintiff and other non-party Aggrieved
16 Employees all wages due violates Labor Code section 204. Plaintiff and other non-party
17 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
18 sections 210 and/or 2699(a), (f), and (g).

19 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

20 **VIOLATION OF LABOR CODE SECTION 2802**

21 93. At all times herein set forth, California Labor Code section 2802 provides that
22 an employer must reimburse employees for all necessary expenditures and losses incurred by
23 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
24 to prevent employers from passing off their cost of doing business and operating expenses on
25 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
26 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: "[w]hen the
27 employer requires the use of tools or equipment or they are necessary to the performance of a
28 job, such tools and equipment shall be provided and maintained by the employer, except that

1 an employee whose wages are at least two (2) times the minimum wage may provide and
2 maintain hand tools and equipment customarily required by the particular trade or craft.”

3 94. First, during the relevant time period, Defendants, on a company-wide basis,
4 required that Plaintiff and other non-party Aggrieved Employees use their own personal
5 mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out
6 their job duties, but failed to reimburse them for the costs of their work-related mobile device
7 expenses throughout their employment. For example, Plaintiff and other non-party Aggrieved
8 Employees were required to use their personal mobile devices for work-related tasks,
9 including responding to calls from management and other employees regarding work-related
10 issues. Specifically, Plaintiff used his personal cellular phone to respond to calls from
11 Defendants’ management and other employees regarding work-related emergencies and shift
12 coverage. Although Defendants required Plaintiff and other non-party Aggrieved Employees
13 to utilize their personal mobile devices and/or mobile data to carry out their work-related
14 responsibilities, Defendants failed to reimburse them for these costs.

15 95. Second, during the relevant time period, Defendants, on a company-wide basis,
16 required that Plaintiff and other non-party Aggrieved Employees use their own personal
17 vehicles to travel to different facilities to cover shifts. For example, Plaintiff drove from
18 Defendants’ Oakland facility to Defendants’ Richmond facility to provide shift coverage,
19 which was about a 14-mile drive. Although Defendants required Plaintiff and other non-party
20 Aggrieved Employees to utilize their personal vehicles to carry out their work-related
21 responsibilities, Defendants failed to reimburse them for their mileage or travel expenses.

22 96. Defendants could have provided Plaintiff and other non-party Aggrieved
23 Employees with the actual equipment for use on the job, such as company mobile devices and
24 company vehicles; or, Defendants could have reimbursed employees for the costs of their
25 mobile device usage, mileage, and travel expenses. Instead, Defendants passed these
26 operating costs off onto Plaintiff and other non-party Aggrieved Employees.

27 97. Defendants’ company-wide policy and/or practice of passing on their operating
28 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code

1 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
2 other non-party Aggrieved Employees for necessary business-related expenses and costs.

3 98. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
4 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

5 **REQUEST FOR JURY TRIAL**

6 Plaintiff requests a trial by jury.

7 **PRAYER FOR RELIEF**

8 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
9 judgment against Defendants, jointly and severally, as follows:

10 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
11 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
12 amount.

13 **As to the First Cause of Action**

14 2. That the Court declare, adjudge, and decree that Defendants violated the
15 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
16 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
17 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
18 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
19 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
20 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
21 earned wages upon termination); 204 (by failing to timely pay all earned wages during
22 employment); and 2802 (by failing to reimburse business expenses);

23 3. For civil penalties pursuant to the California Labor Code, including sections
24 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
25 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
26 and 2802;

27 4. For attorneys' fees and for costs pursuant to California Labor Code section
28 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California

1 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
2 1197, 1198, and 2802; and

3 5. For such other and further relief as the Court may deem equitable and
4 appropriate.

5

6 Dated: September 21, 2023

Respectfully submitted,

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Capstone Law APC

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By: 

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Robert Drexler
Molly DeSario
Jonathan Lee

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Attorneys for Plaintiff Michael Saephan

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EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

June 7, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Michael Saephan v. Dreisbach Enterprises, Inc.*

Dear PAGA Administrator:

This office represents Michael Saephan in connection with his claims under the California Labor Code. Mr. Saephan was an employee of DREISBACH ENTERPRISES, INC. ("DREISBACH").

The employer may be contacted directly at the addresses below:

DREISBACH ENTERPRISES, INC.
575 MARITIME ST
OAKLAND, CA 94607

DREISBACH ENTERPRISES, INC.
PO BOX 7509
OAKLAND, CA 94601

Mr. Saephan intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Saephan seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DREISBACH as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DREISBACH employed Mr. Saephan as an hourly paid, non-exempt Shipping and Receiving Supervisor from approximately August 2003 to February 2023. During his employment, Mr. Saephan typically worked eight (8) hours or more per day and five (5) days or more per week. At the time his employment ended, Mr. Saephan was compensated approximately \$30.00 per hour. His primary job duties included, without limitation, checking in delivery drivers and cargo containers, receiving and auditing commodities, completing data entry, and scheduling deliveries.

DREISBACH committed one or more of the following Labor Code violations against Mr. Saephan, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

DREISBACH’s Company-Wide and Uniform Payroll and HR Practices

DREISBACH ENTERPRISES, INC. is a California corporation that provides refrigerated warehousing and logistics services in Northern California. Upon information and belief, DREISBACH maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Oakland, California, for all non-exempt, hourly paid employees working for DREISBACH in California, including Mr. Saephan and other aggrieved employees. At all relevant times, DREISBACH issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Saephan and other aggrieved employees, regardless of their location or position.

Upon information and belief, DREISBACH maintains a centralized Payroll department at its corporate headquarters in Oakland, California, which processes payroll for all non-exempt, hourly paid employees working for DREISBACH in California, including Mr. Saephan and other aggrieved employees. Further, DREISBACH issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Saephan and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, DREISBACH utilized the same methods and formulas when calculating wages due to Mr. Saephan and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

DREISBACH willfully failed to pay all overtime wages owed to Mr. Saephan and other aggrieved employees. During the relevant time period, Mr. Saephan and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Saephan’s experience and counsel’s review of those records currently available relating to Mr. Saephan’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Saephan reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, DREISBACH had, and continues to have, a company-wide policy and/or practice requiring Mr. Saephan and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts and on their days off. For example, before his shifts and on his days off, DREISBACH required Mr. Saephan to communicate over the phone with management for 30-60 minutes at a time regarding work-related matters. As a further example, Mr. Saephan was required to travel for 20-25 minutes between DREISBACH's facilities to provide additional shift coverage and was not compensated for the time spent traveling from the Oakland facility to the Richmond facility. Additionally, at least twice per month, after Mr. Saephan had already clocked out from his shift, he would be asked to return to the facility to handle work-related emergencies, which could take about 30 minutes each occurrence. Thus, DREISBACH failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Saephan and other aggrieved employees received no compensation for this time.

Further, during the relevant period, DREISBACH implemented, on a company-wide basis, an employer-imposed requirement that Mr. Saephan and other aggrieved employees undergo mandatory COVID-19 health screenings and submit to COVID-19 testing before clocking in for their scheduled shifts. For example, Mr. Saephan was required to undergo a daily temperature check and fill out a form pertaining to possible symptoms before being permitted to clock in for his shift. Additionally, Mr. Saephan and other aggrieved employees had to submit to COVID-19 testing due to a possible virus exposure in the workplace. For example, on two (2) occasions, Mr. Saephan had to self-administer a rapid COVID-19 test before he was cleared to enter the facility and clock in for his shift, which took approximately 15 minutes each occurrence. Even though DREISBACH required these health screenings and testing, DREISBACH did not provide Mr. Saephan and other aggrieved employees with a mechanism to record this time so they could be compensated for the time spent undergoing the health screenings and testing.

Second, DREISBACH had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads and strict productivity quotas, resulting in a failure to provide Mr. Saephan and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Saephan and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. DREISBACH also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads and strict productivity quotas, further caused Mr. Saephan and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Saephan's meal periods were frequently interrupted for up to 20 minutes by other employees requesting assistance. Further, approximately twice per month, Mr. Saephan worked through his meal periods to keep up with the demands of work and complete his assigned duties. DREISBACH did not compensate Mr. Saephan and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Furthermore, on information and belief, because DREISBACH frowned upon employees accruing meal period penalties, DREISBACH's management pressured employees to clock out for meal periods, on threat of discipline, to reflect compliant meal periods regardless of whether they had received a compliant meal period or not, in order to limit the meal penalties that DREISBACH would otherwise owe. Thus, DREISBACH did not record all hours worked during meal periods, and Mr. Saephan and other aggrieved employees performed work during meal periods for which they were not paid.

DREISBACH knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Saephan and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Saephan and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Saephan and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, DREISBACH did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, DREISBACH paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DREISBACH failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, DREISBACH failed to pay all overtime wages by paying a lower overtime rate than required.

DREISBACH's failure to pay Mr. Saephan and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Saephan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 9-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11090(2)(H) (defining "Hours Worked").

As set forth above, during the relevant time period, DREISBACH had a company-wide policy and/or practice requiring Mr. Saephan and other aggrieved employees to perform work-related tasks while off-the-clock before and after their shifts and on their days off, including discussing work matters on the phone, traveling to another facility to cover shifts, addressing work-related emergencies, and undergoing mandatory COVID-19 health screenings and testing. DREISBACH failed to track this time Mr. Saephan and other aggrieved employees spent working off-the-clock, and Mr. Saephan and other aggrieved employees received no compensation for this time.

Further, as also stated above, due to DREISBACH's policies and/or practices of understaffing its locations while assigning heavy workloads and strict productivity quotas, and failing to schedule meal periods, Mr. Saephan and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, DREISBACH's management pressured employees to

record compliant meal periods, upon threat of discipline, when meal periods were missed, short, and/or interrupted to reflect compliant meal periods. Thus, DREISBACH systematically failed to pay Mr. Saephan and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, DREISBACH did not pay minimum wages for all hours worked by Mr. Saephan and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, DREISBACH did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, DREISBACH regularly failed to pay at least minimum wages to Mr. Saephan and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Saephan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, during the relevant time period, DREISBACH had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads and strict productivity quotas, which resulted in a lack of meal period coverage and prevented Mr. Saephan and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as also stated, DREISBACH had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Saephan and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Saephan and other aggrieved employees have had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, approximately twice per month, Mr. Saephan missed his meal periods due to the demanding workload and pressure to meet the productivity quotas DREISBACH's management imposed. Further, about twice per month, Mr. Saephan took his meal periods late, after having worked in excess of five (5) hours into his shift, in order to complete his assigned duties. Moreover, as stated,

Mr. Saephan's meal periods were occasionally cut short and/or interrupted by other employees asking him for assistance.

Further, as set forth above, on information and belief, because DREISBACH frowned upon employees accruing meal period penalties, DREISBACH's management pressured Mr. Saephan and other aggrieved employees to clock out for meal periods, upon threat of discipline, to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by DREISBACH. For example, Mr. Saephan was required to clock out for his meal periods to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods.

Moreover, DREISBACH did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Saephan and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, DREISBACH knew or should have known that, as a result of these policies, Mr. Saephan and other aggrieved employees were prevented from being relieved of all duties and were required to perform some of their assigned duties during meal periods. DREISBACH further knew or should have known that it did not pay Mr. Saephan and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, DREISBACH engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Saephan and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that DREISBACH did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, DREISBACH did not pay other aggrieved employees at the correct rate of pay for premiums because DREISBACH systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DREISBACH failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Saephan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, DREISBACH regularly failed to authorize and permit Mr. Saephan and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, DREISBACH’s company-wide practices, including understaffing while assigning heavy workloads and strict productivity quotas, prevented Mr. Saephan and other aggrieved employees from being relieved of all duty to take rest periods. DREISBACH also failed to schedule rest periods, which further led to Mr. Saephan and other aggrieved employees not being authorized and permitted to take rest periods.

Moreover, upon information and belief, DREISBACH maintained a company-wide on-premises rest period policy, which effectively required that Mr. Saephan and/or other aggrieved employees remain on DREISBACH’s premises during their rest periods. Because Mr. Saephan and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, DREISBACH effectively maintained control over Mr. Saephan and/or other aggrieved employees during rest periods.

As a result of DREISBACH’s practices and policies, Mr. Saephan and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Saephan’s first rest periods were frequently interrupted by DREISBACH’s management asking him for information or inquiring about the status of operations. Mr. Saephan also regularly had to forego his second and/or third rest periods because of the heavy workload and DREISBACH’s failure to schedule rest periods for employees.

DREISBACH has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Saephan and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DREISBACH did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DREISBACH did not pay other aggrieved employees at the correct rate of pay for premiums because DREISBACH failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DREISBACH failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Saephan and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. DREISBACH has not provided Mr. Saephan and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, DREISBACH has knowingly and intentionally provided Mr. Saephan and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DREISBACH issued uniform wage statements to Mr. Saephan and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or sick leave pay, and the corresponding number of hours worked at each hourly rate. Specifically, DREISBACH violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because DREISBACH did not record the time Mr. Saephan and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), DREISBACH did not list the correct amount of gross wages and net wages earned by Mr. Saephan and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DREISBACH failed to accurately list the total number of hours worked by Mr. Saephan and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because DREISBACH did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or sick leave pay, DREISBACH did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, DREISBACH failed to list the correct amount of net wages in violation of section 226(a)(5). DREISBACH also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or sick leave pay, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), DREISBACH willfully failed to maintain accurate payroll records for Mr. Saephan and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DREISBACH engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed, on a company-wide basis, to keep accurate records of work period and meal period start and end times for Mr. Saephan and other aggrieved employees, in violation of section 1198. Also, in light of DREISBACH’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, DREISBACH kept no records of meal start and end times for second meal periods.

Because DREISBACH failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Saephan and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Saephan and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Saephan and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, DREISBACH willfully failed to pay Mr. Saephan and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

Mr. Saephan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

DREISBACH willfully failed to pay Mr. Saephan and other aggrieved employees who are no longer employed by DREISBACH the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving DREISBACH's employ.

Mr. Saephan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[:]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, on information and belief, DREISBACH did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, DREISBACH paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DREISBACH failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, DREISBACH failed to pay all sick leave benefits by paying a lower sick leave pay rate than

required. Specifically, DREISBACH paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

DREISBACH's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, DREISBACH, on a company-wide basis, required that Mr. Saephan and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses throughout their employment. For example, Mr. Saephan and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls from management and other employees regarding work-related issues. Specifically, Mr. Saephan used his personal cellular phone to respond to calls from DREISBACH's management and other employees regarding work-related emergencies and shift coverage. Although DREISBACH required Mr. Saephan and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, DREISBACH failed to reimburse them for these costs.

Second, during the relevant time period, DREISBACH, on a company-wide basis, required that Mr. Saephan and other aggrieved employees use their own personal vehicles to travel to different facilities to cover shifts. For example, Mr. Saephan drove from DREISBACH's Oakland facility to DREISBACH's Richmond facility to provide shift coverage, which was about a 14-mile drive. Although DREISBACH required Mr. Saephan and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, DREISBACH failed to reimburse them for their mileage or travel expenses.

DREISBACH could have provided Mr. Saephan and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles; or DREISBACH could have reimbursed employees for the costs of their mobile device usage, mileage, and travel expenses. Instead, DREISBACH passed these operating costs off onto Mr. Saephan and other aggrieved employees.

Thus, DREISBACH had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Saephan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." DREISBACH, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Saephan's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Saephan seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Saephan, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against DREISBACH for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Saephan seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: DREISBACH ENTERPRISES, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7022 2410 0000 2405 7637

DREISBACH ENTERPRISES, INC.
575 MARITIME STREET
OAKLAND, CA 94607

U.S. Postal Service[™]
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only
For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee
Extra Services & Fees (round down, add fee as appropriate)
Return Receipt (hardcopy) \$
Restrict Delivery (hardcopy) \$
Postmark

7022 2410 0000 2405 7637

DREISBACH ENTERPRISES, INC.
575 MARITIME STREET
OAKLAND, CA 94607

PS Form 3800, April 2015 PSN 7530-02-000-9053 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece. DREISBACH ENTERPRISES, INC. 575 MARITIME STREET OAKLAND, CA 94607 2. Address (Print or type name and address of addressee) 7022 2410 0000 2405 7637		A. Signature X ☐ Agent ☐ Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail[®] ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Registered Mail[™] ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation[™] ☐ Signature Confirmation Restricted Delivery ☐ Priority Mail Express[®] ☐ Registered Mail[™] ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation[™] ☐ Signature Confirmation Restricted Delivery	
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



7022 2410 0000 2405 7774

CERTIFIED MAIL

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)

\$

☐ Restricted Delivery (see instructions)

\$

☐ Signature Confirmation[™]

Permit #

Postmark

DREISBACH ENTERPRISES, INC.

P.O. BOX 7509

OAKLAND, CA 94601

7022 2410 0000 2405 7774

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

DREISBACH ENTERPRISES, INC.
P.O. BOX 7509
OAKLAND, CA 94601

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

DREISBACH ENTERPRISES, INC.
P.O. BOX 7509
OAKLAND, CA 94601

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
☒ Adult Signature
☐ Agent
☐ Addressee
- B. Received by (Printed Name)
C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

- Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☒ Certified Mail[®]
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Insured Mail[®]
 - ☐ Mail Restricted Delivery
 - ☐ Priority Mail Express[®]
 - ☐ Registered Mail[™]
 - ☐ Registered Mail Restricted Delivery
 - ☐ Signature Confirmation[™]
 - ☐ Signature Confirmation Restricted Delivery



2. 7022 2410 0000 2405 7774

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

DREISBACH ENTERPRISES, INC.
 575 MARITIME STREET
 OAKLAND, CA 94607



2. Article Number (Transfer from 2943 to 13)

7022 2410 0000 2405 7637

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Parrell F. Hume*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Daniel F. Hume

C. Date of Delivery

6-10-23

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece,

DREISBACH ENTERPRISES, INC.
P.O. BOX 7509
OAKLAND, CA94601



2. Address on the reverse for service to be used

7022 2410 0000 2405 7774

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Signature]

☒ Agent

☐ Addressee

B. Received by (Printed Name)

Perla

C. Date of Delivery

6/12/23

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes

☐ No



Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Mail Restricted Delivery

(0)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **September 21, 2023**, I served the document described **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Scott P. Jang
Scott.Jang@jacksonlewis.com
Spencer J. Davidson
Spencer.Davidson@jacksonlewis.com
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, California 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401

Attorneys for Defendants
DREISBACH ENTERPRISES, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via OneLegal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **September 21, 2023**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature