

FILED
Superior Court of California
County of Los Angeles

10/23/2023

David W. Slayton, Executive Officer / Clerk of Court

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Attorneys for Plaintiff(s),

STEVEN FAUSTINOS, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

(UNLIMITED JURISDICTION)

STEVEN FAUSTINOS, on behalf of himself, all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Case No. 23STCV18306

Lead Case No. 23STCV09167

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq; and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

Plaintiff,

vs.

SHULTZ STEEL COMPANY, a California corporation, and DOES 1–50, inclusive,

Defendants.



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1 Plaintiff, Steven Faustinos (hereafter “Plaintiff” or “Faustinos”), on behalf of himself and
2 all others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Shultz Steel
9 Company, and Does 1 through 50, inclusive (collectively “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated workers for unpaid wages, statutory and civil penalties, interest,
12 and related relief. These claims are based on Defendants’ failures to:

- 13 (A) Provide all meal periods;
- 14 (B) Authorize and permit all rest breaks;
- 15 (C) Pay premium wages for unprovided meal periods;
- 16 (D) Pay premium wages for unprovided rest breaks;
- 17 (E) Indemnify for necessary work-related expenditures;
- 18 (F) Issue only accurate and complete itemized wage statements;
- 19 (G) Timely pay wages upon termination of employment;

20 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
21 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
22 and representative action.

23 **II. THE PARTIES**

24 3. Plaintiff Steven Faustinos is a resident of California. At all relevant times, Plaintiff
25 was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
26 “aggrieved employee” within the meaning of Labor Code § 2699 (c).

27 4. Defendant Shultz Steel Company is a corporation organized and existing under the
28 laws of California and also a citizen of California based on Plaintiff’s information and belief.

5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but



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1 is informed and believes and thereon alleges that said Defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
4 when ascertained.

5 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
7 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
8 within the course and scope of such agency, employment, direction and control, and with the
9 approval and ratification of each of the other Defendants.

10 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
11 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
12 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
13 Members or otherwise complying with their rights in accordance with applicable California labor
14 laws as alleged herein.

14 **III. CLASS ALLEGATIONS**

15 8. This action has been brought and may be maintained as a class action pursuant to
16 California Code of Civil Procedure section 382 because there is a well-defined community of
17 interest among the persons who comprise the readily ascertainable class defined below and
18 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
19 a class action.

20 9. **Class Definition:** The Class is defined as follows: All persons Defendants
21 employed in California as hourly, non-exempt employees, including grinders, individuals
22 performing work comparable to the aforementioned, compensated comparably to the
23 aforementioned, and individuals in similar positions, at any time during the period beginning four
24 years prior to the filing of this action and ending on the date that final judgment is entered in this
25 action (“Class” or “Class Members”).

26 10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
27 right to amend or modify the class definition with greater specificity, by further division into
28 subclasses and/or by limitation to particular issues.

11. **Numerosity:** The Class Members are so numerous that the individual joinder of
each individual Class Member is impractical. While Plaintiff does not currently know the exact



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number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

12. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

B. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

C. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

D. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

E. Whether Defendants willfully failed to provide the class with timely final wages;

F. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, et seq., with respect to the Class; and

G. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

13. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

15. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of



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1 Plaintiff and absent Class Members.

2 16. **Superiority:** A class action is vastly superior to other available means for fair and
3 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
4 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
5 and efficiently prosecute their common claims in a single forum without the unnecessary
6 duplication of effort and expense that numerous individual actions would entail. In addition, the
7 monetary amounts due to many individual Class Members are likely to be relatively small and
8 would thus make it difficult, if not impossible, for individual Class Members to both seek and
9 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
10 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
11 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

12 **IV. STATEMENT OF FACTS**

13 17. The Wage Order applies to "all persons employed in the manufacturing industry
14 whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1. The Wage Order
15 defines "Manufacturing Industry" to mean

16 any industry, business, or establishment operated for the purpose of
17 preparing, producing, making, altering, repairing, finishing, processing,
18 inspecting, handling, assembling, wrapping, bottling, or packaging
19 goods, articles, or commodities, in whole or in part; EXCEPT when such
20 activities are covered by Orders in the: Canning, Preserving, and Freezing
21 Industry; Industries Handling Products After Harvest; Industries
22 Preparing Agricultural Products for Market, on the Farm; or Motion
23 Picture Industry.

24 Wage Order, § 2(H). At all relevant times during the applicable limitations period, the
25 Defendants, Faustinos, and all of the Class Members were covered by the Wage Order because
26 Faustinos and all of the Class Members worked for the Defendants in manufacturing occupations.
27 Accordingly, Faustinos and all of the other Class Members are entitled to the protections the
28 Wage Order provides.

18. The Defendants operate a forging facility that manufactures industrial parts
catering to the aerospace and marine industry. On approximately August 24, 2014, the Defendants



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1 began to employ Faustinos in South Gate, California, in the position of grinder. The Defendants
2 continuously employed him in that capacity until on or about December 28, 2022 when his
3 employment ended.

4 19. At all relevant times, the Defendants issued wages to Faustinos and all of the other
5 Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant
6 times, the Defendants classified Faustinos and all of the other Class Members as non-exempt
7 employees entitled to the protections of the Labor Code and the Wage Order.

8 20. Faustinos and the Class Members often worked six (6) to seven (7) days in a
9 workweek, and between eight (8) to ten (10) hours per workday. At all relevant times, Faustinos
10 and the Class Members worked over eight (8) hours in one workday and over forty (40) hours in
11 one workweek.

12 21. At all relevant times, the Defendants failed to provide Faustinos and all of the other
13 Class Members with all timely 30-minute, off-duty meal periods. The Defendants also failed to
14 pay premium wages for days on which they failed to provide Faustinos and all of the other Class
15 Members with meal periods as required by law. Due to the workload and failure to hire sufficient
16 staff members, the Defendants denied Faustinos and the Class Members their 30-minute off-duty
17 meal period within the first five hours of work. Defendants also denied 30-minute off-duty meal
18 periods to Faustinos and the Class Members by interrupting them with directives to complete
19 work. Due to the workload and insufficient staff members, the Defendants also required Faustinos
20 and the Class Members to clock-out within the first five hours of work for meal breaks and
21 continue working while clocked-out.

22 22. At all relevant times, the Defendants failed to authorize and permit Faustinos and
23 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
24 worked or major portion thereof. The Defendants also failed to pay premium wages for days on
25 which they failed to authorize and permit Faustinos and all of the other Class Members to take
26 rest breaks as required by law.

27 23. At all relevant times, the Defendants required Faustinos and all of the other Class
28 Members to incur certain business expenses in the course of performing their duties. The
Defendants required Faustinos and all of the other Class Members to supply mobile phones to
perform their job duties. At all relevant times, Faustinos and the other Class Members received
several phone calls and text messages from his supervisors during the workday about work related



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1 matters. On a daily basis, Defendants repeatedly contacted Faustinos and the Class Members on
2 their personal phones, in order to receive task updates. However, the Defendants did not provide
3 mobile phones and did not reimburse Faustinos and the other Class Members for these expenses.

4 24. At all relevant times, the Defendants failed to issue to Faustinos and all of the other
5 Class Members complete and accurate wage statements that state all hours worked at the correct
6 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
7 the wage statements they issued to Faustinos and all of the other Class Members the unpaid wages
8 discussed above. The wage statements fail to state all meal period premium wages earned, all rest
9 break premium wages earned, and related information.

10 25. At all relevant times, the Defendants failed to maintain accurate employee records
11 of Faustinos and all of the other Class Members.

12 26. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
13 unlawful practices and policies, Plaintiff and the Class Members were:

- 14 A. Not provided with all off duty meal periods;
- 15 B. Not authorized and permitted to take all rest break periods;
- 16 C. Not paid one hour's pay for each workday in which Defendants failed to
17 authorize and permit them to take one or more timely rest periods;
- 18 D. Not paid one hour's pay for each workday in which Defendants failed to
19 provide them with one or more timely meal periods;
- 20 E. Not paid all wages earned, including, but not limited to, minimum, regular,
21 overtime, and doubletime wages for work performed while clocked out;
- 22 F. Not indemnified for all necessary business expenditures incurred during
23 the discharge of their duties;
- 24 G. Not provided with accurate and complete wage statements; and
- 25 H. Not timely paid all earned and unpaid wages at the time their employment
26 ended.

27 **FIRST CAUSE OF ACTION**

28 **FAILURE TO PROVIDE MEAL PERIODS**

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

27 27. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.



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1 28. At all relevant times during the applicable limitations period, Plaintiff and the
2 Class Members have been employees of Defendants and entitled to the benefits and protections
3 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

4 29. In relevant part, California Labor Code § 1198 states:

5 The maximum hours of work and the standard conditions of labor fixed by the
6 commission shall be the maximum hours of work and the standard conditions of
7 labor for employees. The employment of any employee for longer hours than those
8 fixed by the order or under conditions of labor prohibited by the order is unlawful.

9 30. In relevant part, In relevant part, California Labor Code § 512 states:

10 An employer shall not employ an employee for a work period of
11 more than five hours per day without providing the employee with
12 a meal period of not less than 30 minutes, except that if the total
13 work period per day of the employee is no more than six hours, the
14 meal period may be waived by mutual consent of both the
15 employer and employee.

16 An employer shall not employ an employee for a work period of
17 more than 10 hours per day without providing the employee with
18 a second meal period of not less than 30 minutes, except that if the
19 total hours worked is no more than 12 hours, the second meal
20 period may be waived by mutual consent of the employer and the
21 employee only if the first meal period was not waived.

22 31. In relevant part, Section 11 of the Wage Order states:

23 **Meal Periods**

24 (A) No employer shall employ any person for a work period of more
25 than five (5) hours without a meal period of not less than 30
26 minutes, except that when a work period of not more than six (6)
27 hours will complete the day's work the meal period may be waived
28 by mutual consent of the employer and the employee. Unless the
employee is relieved of all duty during a 30 minute meal period,
the meal period shall be considered an "on duty" meal period and
counted as time worked. . . .

(B) If an employer fails to provide an employee a meal period in
accordance with the applicable provisions of this Order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday that the



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meal period is not provided.

32. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

33. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

34. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order.

35. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

36. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

37. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



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suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

38. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

SECOND CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

39. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

40. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

41. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

42. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.



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1 43. In relevant part, California Labor Code § 226.7 states:

2 (b) An employer shall not require an employee to work during
3 a meal or rest period mandated pursuant to an applicable
4 statute, or applicable regulation, standard, or order of the
5 Industrial Welfare Commission, the Occupational Safety
6 and Health Standards Board, or the Division of
7 Occupational Safety and Health.

8 (c) If an employer fails to provide an employee a meal period
9 or rest period in accordance with a state law, including, but
10 not limited to, an applicable statute or applicable
11 regulation, standard, or order of the Industrial Welfare
12 Commission, the Occupational Safety and Health
13 Standards Board, or the Division of Occupational Safety
14 and Health, the employer shall pay the employee one
15 additional hour of pay at the employee's regular rate of
16 compensation for each work day that the meal or rest
17 period is not provided.

18 44. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
19 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
20 of work, or major fraction thereof.

21 45. Defendants intentionally failed to authorize and permit Plaintiff and the Class
22 Members to take all 10-minute rest periods free from any work duties in accordance with the
23 Wage Order.

24 46. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
25 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
26 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
27 Plaintiff and the other Class Members to take timely rest periods.

28 47. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
 to authorize and permit them to take 10-minute rest periods every four hours worked or major
 fraction thereof.



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1 48. Defendants failed to pay Plaintiff the additional wages required by California
2 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
3 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
4 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
5 Class Members with additional wages for all rest breaks not provided to them as required by
6 California Labor Code § 226.7.

7 49. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
8 suffered damages in amounts subject to proof to the extent they were not paid additional wages
9 owed for all rest breaks not provided to them.

10 50. By reason of the above, Plaintiff and the Class Members are entitled to premium
11 wages for workdays in which one or more rest breaks were not provided to them pursuant to
12 California Labor Code § 226.7.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO INDEMNIFY**

15 **Lab. Code § 2802**

16 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

17 51. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

18 52. In pertinent part, California Labor Code § 2802(a) states: "An employer shall
19 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
20 consequence of the discharge of his or her duties."

21 53. California Labor Code § 1198 prohibits employers from employing their
22 employees under conditions prohibited by the Wage Order.

23 54. At all relevant times, Defendants required Plaintiff and the Class Members to incur
24 certain business expenses in the course of performing their duties.

25 55. As described above, the Defendants required Faustinos and all of the other Class
26 Members to incur certain business expenses in the course of performing their duties. The
27 Defendants required Faustinos and all of the other Class members to supply mobile phones to
28 perform their job duties. At all relevant times, Faustinos and the other Class Members received
several phone calls and text messages from his supervisors during the workday about work related
matters. On a daily basis, Defendants repeatedly contacted Faustinos and the Class Members on



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1 their personal phones, in order to receive task updates. However, the Defendants did not provide
2 mobile phones and did not reimburse Faustinos and the other Class Members for these expenses.

3 56. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
5 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
6 during the course of performing their duties.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

9 **Lab. Code §§ 226 and 226.2**

10 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

11 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE** 12 **STATEMENTS**

13 57. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 58. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
15 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
16 statement showing:

17 A. Gross wages earned;

18 B. Total hours worked by the employee, except for any employee whose
19 compensation is solely based on a salary and who is exempt from payment of overtime under
20 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

21 C. The number of piece rate units earned and any applicable piece rate if the
22 employee is paid on a piece-rate basis;

23 D. All deductions, provided that all deductions made on written orders of the
24 Employee may be aggregated and shown as one item;

25 E. Net wages earned;

26 F. The inclusive dates of the period for which the employee is paid;

27 G. The name of the employee and his or her social security number, except
28 that by January 1, 2008, only the last four digits of his or her social security number or an
employee identification number other than a social security number may be shown on the itemized
statement;



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1 H. The name and address of the legal entity that is the employer; and

2 I. All applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 59. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
5 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
6 the employer fails to provide accurate and complete information as required by California Labor
7 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
8 alone one or more of the following:

9 A. The amount of the gross wages or net wages paid to the employee during
10 the pay period or any of the other information required to be provided on the itemized wage
11 statement pursuant to California Labor Code § 226(a);

12 B. Which deductions the employer made from gross wages to determine the
13 net wages paid to the employee during the pay period;

14 C. The name and address of the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
16 and address of the legal entity that secured the services of the employer during the pay period;

17 D. The name of the employee and only the last four digits of his or her
18 social security number or an employee identification number other than a social security number;
19 and

20 E. The number of piece-rate units earned and the piece rate.

21 60. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
22 means a reasonable person would be able to readily ascertain the information without reference
23 to other documents or information.

24 61. As alleged herein, at all relevant times during the applicable limitations period,
25 Defendants violated California Labor Code section 226 because they did not properly and
26 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
27 the corresponding number of hours worked at each rate by the employee and other requirements
28 of California Labor Code section 226. Defendants knowingly and intentionally did not issue either
as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if
wages are paid by personal check or cash, statements to Plaintiff and the Class Members that state
all meal period premium wages earned, all rest break premium wages earned, and related



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information.

62. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

63. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

FIFTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

65. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

66. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

67. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

68. The Defendants failed to pay Faustinos and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their



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1 employment with Faustinos, including unprovided meal period premium wages, unprovided rest
2 break premium wages, and related compensation.

3 69. By failing to pay such earned wages to Plaintiff and the Class Members,
4 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
5 § 201 or § 202.

6 70. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
7 and the Class Members all of their earned and unpaid wages (described above) have been willful
8 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
9 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
10 they have had the ability to comply with those legal requirements.

11 71. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
12 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
13 penalties for each Class Member.

14 **SIXTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

17 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

18 72. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 73. At all relevant times during the applicable limitations period, Plaintiff and the
20 Class Members have been employees of Defendants and entitled to the benefits and protections
21 of the Business and Professions Code §§ 17200, *et seq.*

22 74. The unlawful conduct of Defendants alleged herein amount to and constitutes
23 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
24 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
25 gained a competitive advantage over other comparable companies doing business in California
26 that comply with their legal obligations to compensate employees for all earned wages.

27 75. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
28 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
Members were deprived of missed meal period premium wages, missed rest period premium
wages, phone expense reimbursement, and comparable money and property.

76. Pursuant to California Business & Professions Code § 17203, Plaintiff and the



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Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

77. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

**(Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,
against all Defendants)**

78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

79. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning July 26, 2022, and ending on the date that final judgment is entered in this action.

80. Labor Code § 204 states:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set



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1 out in a subsequently issued paystub shall state the inclusive
2 dates of the pay period for which the employer is correcting its
3 initial report of hours worked.

4 (c) However, when employees are covered by a collective bargaining
5 agreement that provides different pay arrangements, those arrangements shall
6 apply to the covered employees.

7 (d) The requirements of this section shall be deemed satisfied by the payment
8 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
9 more than seven calendar days following the close of the payroll period.

10 81. Defendants paid wages to employees on regular intervals. Defendants, however,
11 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
12 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
13 intervals for all wages earned and all hours worked.

14 82. During the applicable time period, Defendants violated California Labor Code §§
15 201, 202, 203, 204, 226, 226.7, 512, 1174, 1198, and 2802.

16 83. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
17 behalf of themselves and other current or former employees, to bring a civil action to recover civil
18 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

19 84. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
20 Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations
21 of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 512, 1174, 1198, and 2802 during
22 the applicable limitations period in the following amounts:

23 A. For violations of California Labor Code § 204, one hundred dollars
24 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
25 (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation
26 (penalty amounts established by California Labor Code § 210).

27 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
28 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
for each Aggrieved Employee for each subsequent violation (penalty amounts established by
California Labor Code § 226.3).

C. For violations of California Labor Code § 512, fifty dollars (\$50.00) for



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each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by California Labor Code § 1174.5).

E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

85. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated July 26, 2023, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated July 26, 2023 is attached as **Exhibit A**. Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate these allegations.

86. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

87. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff’s claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;



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1 D. Unpaid wages, including minimum, regular, overtime, double-time, split
2 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
3 time, and reporting time wages;

4 E. Civil Penalties;

5 F. Liquidated damages;

6 G. Statutory penalties, including waiting time penalties;

7 H. Restitution;

8 I. Declaratory relief;

9 J. Actual damages;

10 K. Pre-judgment interest;

11 L. Costs of suit;

12 M. Reasonable attorneys' fees; and

13 N. Such other relief as the Court deems just and proper.

14 **VI. DEMAND FOR JURY TRIAL**

15 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
16 on all issues so triable.

17 Respectfully submitted,

18 THE SPIVAK LAW FIRM

19 

20 Dated: October 23, 2023

21 By:

22 DAVID G. SPIVAK, Attorneys for
23 Plaintiff(s), STEVEN FAUSTINOS,
24 and all others similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM
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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

July 26, 2023

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Steven Faustinos / Shultz Steel Company

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Steven Faustinos (hereafter “Faustinos” or “Complainant”) provides notice that Shultz Steel Company, and related entities (collectively “the Shultz Employers” or “the Employers”) violated his rights and those of all other individuals the Shultz Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including grinders, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1174, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Faustinos hereby provides this notice to the Labor & Workforce Development Agency and the Shultz Employers and their agents and representatives.

At all relevant times, the Shultz Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Faustinos and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

The Shultz Employers operate a forging facility that manufactures industrial parts catering to the aerospace and marine industry. On approximately August 24, 2014, the Shultz Employers began to employ Faustinos in South Gate, California, in the position of grinder. The Shultz Employers continuously employed him in that capacity until on or about December 28, 2022 when his employment ended.

At all relevant times, the Shultz Employers issued wages to Faustinos and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Shultz Employers classified Faustinos and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

Faustinos and the Aggrieved Employees often worked six (6) to seven (7) days in a workweek, and between eight (8) to ten (10) hours per workday. At all relevant times, Faustinos and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek.

At all relevant times, the Shultz Employers failed to provide Faustinos and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Shultz Employers also failed to pay premium wages for days on which they failed to provide Faustinos and all of the other Aggrieved Employees with meal periods as required by law. Due to the workload and failure to hire sufficient staff members, the Employers denied Faustinos and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers also denied 30-minute off-duty meal periods to Faustinos and the Aggrieved Employees by interrupting them with directives to complete work. Due to the workload and insufficient staff members, the Employers also required Faustinos and the Aggrieved Employees to clock-out within the first five hours of work for meal breaks and continue working while clocked-out. The Employers also failed to pay premium wages for days on which they failed to provide Faustinos and the Aggrieved Employees with meal periods as required by law.

At all relevant times, due to high workload and low staffing levels, the Shultz Employers failed to authorize and permit Faustinos and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Shultz Employers also failed to pay premium wages for days on which

they failed to authorize and permit Faustinos and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Shultz Employers required Faustinos and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Shultz Employers required Faustinos and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. At all relevant times, Faustinos and the other Aggrieved Employees received several phone calls and text messages from his supervisors during the workday about work related matters. On a daily basis, the Employers repeatedly contacted Faustinos and the Aggrieved Employees on their personal phones, in order to receive task updates. However, the Employers did not provide mobile phones and did not reimburse Faustinos and the other Aggrieved Employees for these expenses.

At all relevant times, the Shultz Employers failed to issue to Faustinos and all of the other Aggrieved Employees complete and accurate wage statements that state all wages earned. The Shultz Employers knowingly and intentionally failed to state on the wage statements they issued to Faustinos and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Shultz Employers also failed to timely pay Faustinos and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Shultz Employers failed to maintain accurate employee records of Faustinos and all of the other Aggrieved Employees.

For the reasons stated herein, Faustinos alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Shultz Employers failed to provide Faustinos and all of the other Aggrieved Employees all meal periods in compliance with California law;

- (b) The Shultz Employers failed to authorize and permit Faustinos and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Shultz Employers failed to compensate Faustinos and all of the other Aggrieved Employees at one hour's pay for each day in which the Shultz Employers failed to provide them with one or more meal periods as required by law;
- (d) The Shultz Employers failed to compensate Faustinos and all of the other Aggrieved Employees at one hour's pay for each day in which the Shultz Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (e) The Shultz Employers knowingly and intentionally failed to provide Faustinos and all of the other Aggrieved Employees with accurate wage statements;
- (f) The Shultz Employers willfully failed to timely pay Faustinos and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Shultz Employers and when their employment ended; and
- (g) The Shultz Employers failed to maintain accurate employment records pertaining to Faustinos and all of the other Aggrieved Employees.

Accordingly, Faustinos now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Shultz Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage Order defines "Manufacturing Industry" to mean,

any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the: Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest; Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry.

Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Shultz Employers, Faustinos, and all of the Aggrieved Employees were covered by the Wage Order because Faustinos and all of the Aggrieved Employees worked for the Shultz Employers in manufacturing occupations. Accordingly, Faustinos and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. (See Labor Code Section 512.)
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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. (See Labor Code Section 512.)
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

(B) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(C) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Shultz Employers failed to provide Faustinos and all of the other Aggrieved Employees with all timely meal periods. The Shultz Employers denied Faustinos and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Furthermore, the Shultz Employers failed to pay premium wages for days on which they failed to provide Faustinos and all of the other Aggrieved Employees with timely meal periods. Accordingly, Faustinos now seeks civil penalties for these Labor Code violations that the Shultz Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial

Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.
- (d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Shultz Employers failed to authorize and permit Faustinos and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Shultz Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Shultz Employers failed to pay Faustinos and all of the other Aggrieved Employees premium wages on workdays the Shultz Employers failed to provide Faustinos and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Faustinos now seeks civil penalties for these Labor Code violations that the Shultz Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent

violation, per pay period (penalties set by Labor Code section 2699(f)(2));
and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When 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 particular trade or craft in conformity with Labor Code Section 2802.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Shultz Employers required Faustinos and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Shultz Employers required Faustinos and all of the other Aggrieved Employees to supply mobile phones and similar items to perform their job duties. However, the Shultz Employers did not provide these items and did not reimburse Faustinos and the other Aggrieved Employees for these items. Accordingly, Faustinos seeks civil penalties for these Labor Code violations that the Shultz Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Shultz Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Shultz Employers failed to state in the wage statements they issued to Faustinos and all of the other Aggrieved Employees all their hours worked and wages earned. The Shultz Employers knowingly and intentionally failed to state on the wage statements they issued to Faustinos and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all meal period premium wages earned, all rest break premium wages earned, and other required information. Accordingly, Faustinos seeks civil penalties for the Labor Code violations that the Shultz Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Shultz Employers failed to compensate Faustinos and all of the other Aggrieved Employees for wages earned, including unprovided meal period premium wages, unprovided rest break premium wages, and other earnings at the intervals stated above. As a result, the Shultz Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Faustinos now seeks civil penalties for the Labor Code violations that the Shultz

Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Shultz Employers failed to pay Faustinos and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Faustinos, including unprovided meal period premium wages, unprovided rest break premium wages, and similar forms of compensation. By failing to pay Faustinos and all of the other Aggrieved Employees as set forth above at the end of employment, the Shultz Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Faustinos seeks civil penalties from the Shultz Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record

of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Shultz Employers failed to compensate Faustinos and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, all rest break premium wages earned. As a result, the Shultz Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Faustinos and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Faustinos seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

LWDA / The Shultz Employers
Re: Steven Faustinos
July 26, 2023
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Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Steven Faustinos will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.
david@spivaklaw.com
cc: Mr. Steven Faustinos

Shultz Steel Company
c/o Agent for service of process
National Registered Agents, Inc. (C1941323)
330 N Brand Blvd
Glendale, California 91203

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 1801 Century Park East, 25th
Fl, Los Angeles, CA 90067.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United States
Postal Service. It is the practice that correspondence is deposited with the
United States Postal Service the same day it is submitted for mailing.

9 On Monday, October 23, 2023, I caused to have electronically served
10 the following document described as **PLAINTIFF STEVEN FAUSTINOS' FIRST AMENDED**
11 **COMPLAINT** with the third-party cloud service listed below. In doing so,
12 notifications of such filings were electronically mailed to the interested
parties which appear on the third-party cloud service's service list in this
action as follows:

13 Allison C. Eckstrom, Esq.
14 Christopher J. Archibald, Esq.
15 Gabriel Hemphill, Esq.
16 BRYAN CAVE LEIGHTON PAISNER LLP
17 1920 Main St., Suite 1000
Irvine, California 92614-7276
18 allison.eckstrom@bclplaw.com
19 christopher.archibald@bclplaw.com
20 gabriel.hemphill@bclplaw.com

21 XXXX (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the
22 parties to accept electronic service, I caused the documents to be sent to the
23 persons at the electronic service addresses listed above via third-party cloud
24 service **CASE ANYWHERE**.

25 EXECUTED on Monday, October 23, 2023, at Fresno, California.

26 XXXX (State) I declare under penalty of perjury under the laws of the State
27 of California that the above is true and correct.

28 _____ (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.



NAZIE ELENA BAHARLOO