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

JESUS MARTINEZ RAMIREZ, an
individual, on behalf of himself, others
similarly situated,

PLAINTIFF,

v.

JAGUAR FARM LABOR CONTRACTING,
INC., a California Corporation, and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO.: BCV-23-102358-BCB

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Overtime Wages In Violation of Labor Code § 510
2. Penalties Pursuant to Labor Code § 226(e)
3. Waiting Time Penalties Pursuant to Labor Code § 203
4. Violation of Business & Professions Code § 17200
5. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.7, 226.3, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802 and IWC Wage Order Nos. 13-2001 and 14-2001

1 Plaintiff JESUS MARTINEZ RAMIREZ, an individual, on behalf of himself and others
2 similarly situated, and as a private attorney general on behalf of the State of California complains
3 of Defendant JAGUAR FARM LABOR CONTRACTING, INC. (“Jaguar”) and the Doe
4 Defendants (collectively “Defendants”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
8 Plaintiff and the following classes and subclasses:

- 9 (1) all individuals who were employed by JAGUAR FARM LABOR
10 CONTRACTING, INC. or its predecessor, merged or related entities in
11 California as a non-exempt employee (whether paid hourly, piece rate only,
12 and/or piece rate/hourly) or other similar position at any point from January 27,
2019 and continuing into the present (Non-Exempt Class);¹
- 13 (2) all individuals who were employed by JAGUAR FARM LABOR
14 CONTRACTING, INC. or its predecessor, merged or related entities in
15 California as a non-exempt, hourly employee at any point from January 27,
2019 and continuing into the present (the “Non-Exempt Hourly Subclass”);
- 16 (3) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
17 INC. or its predecessor, merged or related entities in California as a non-exempt
18 employee or other similar position and who worked a shift of 9.5 hours in any one
19 workday and/or more than 55 hours in a workweek during a pay period from January
20 27, 2019 to December 31, 2019. (“2019 General Overtime Subclass”);
- 21 (4) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
22 INC. or its predecessor, merged or related entities for one or more pay periods in
23 California as a non-exempt, employee (whether paid hourly, piece rate only, and/or
24 piece rate/hourly) and who worked a shift of more than 9.5 hours in a day and/or 55
25 hours in a week during a period where they also received an incentive payment, piece
26 rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or
attendance bonus from January 27, 2019 to December 31, 2019; (“2019 Incentive Pay
Overtime Subclass”);

27 ¹ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and
28 25 days or from April 6, 2020 to October 1, 2020. “Notwithstanding any other law, the statutes of limitations and
repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”

- 1 (5) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
2 INC. or its predecessor, merged or related entities in California as a non-exempt
3 employee or other similar position and who worked a shift of 9 hours in any one
4 workday and/or more than 50 hours in a workweek during a pay period from January
5 1, 2020 to December 31, 2020. (“2020 General Overtime Subclass”);
- 6 (6) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
7 INC. or its predecessor, merged or related entities for one or more pay periods in
8 California as a non-exempt, employee (whether paid hourly, piece rate only, and/or
9 piece rate/hourly) and who worked a shift of more than 9 hours in a day and/or 50
10 hours in a week during a period where they also received an incentive payment, piece
11 rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or
12 attendance bonus from January 1, 2020 to December 31, 2020; (“2020 Incentive Pay
13 Overtime Subclass”);
- 14 (7) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
15 INC. or its predecessor, merged or related entities in California as a non-exempt
16 employee or other similar position and who worked a shift of 8.5 hours in any one
17 workday and/or more than 45 hours in a workweek during a pay period from January
18 1, 2021 to December 31, 2021. (“2021 General Overtime Subclass”);
- 19 (8) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
20 INC. or its predecessor, merged or related entities for one or more pay periods in
21 California as a non-exempt, employee (whether paid hourly, piece rate only, and/or
22 piece rate/hourly) and who worked a shift of more than 8.5 hours in a day and/or 45
23 hours in a week during a period where they also received an incentive payment, piece
24 rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or
25 attendance bonus from January 1, 2021 to December 31, 2021; (“2021 Incentive Pay
26 Overtime Subclass”);
- 27 (9) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
28 INC. or its predecessor, merged or related entities in California as a non-exempt
employee or other similar position and who worked a shift of eight (8) hours in any
one workday and/or more than forty (40) hours in a workweek during a pay period
from January 1, 2022 and continuing into the present. (“General Overtime Subclass”);
- (10) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
INC. or its predecessor, merged or related entities for one or more pay periods in
California as a non-exempt, employee (whether paid hourly, piece rate only, and/or
piece rate/hourly) and who worked a shift of more than eight (8) hours in a day and/or
forty (40) hours in a week during a period where they also received an incentive
payment, piece rate compensation, non-discretionary bonus, production bonus,

1 efficiency bonus, or attendance bonus from January 1, 2022 and continuing into the
2 present; (“Incentive Pay Overtime Subclass”);

3 Collectively, subclasses three (3), four (4), five (5), six (6), seven (7), eight (8), nine
4 (9), and ten (10) may be referred to as the “Overtime Subclasses.”

5 (11)all individuals who were employed by JAGUAR FARM LABOR
6 CONTRACTING, INC. or its predecessor, merged or related entities for one or
7 more pay periods in California as a non-exempt, employee (whether paid
8 hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of
9 more than eight (8) hours in a day and/or forty (40) hours in a week during a
10 period where they also received an incentive payment, piece rate compensation,
11 non-discretionary bonus, production bonus, efficiency bonus, or attendance
12 bonus from July 21, 2022 and continuing into the present; (Non-Exempt Wage
13 Statement Subclass)

14 (12)all individuals who were employed by JAGUAR FARM LABOR
15 CONTRACTING, INC. or its predecessor, merged or related entities for one or
16 more pay periods in California as a non-exempt, hourly employee and who
17 worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a
18 week during a period where they also received an incentive payment, piece rate
19 compensation, non-discretionary bonus, production bonus, efficiency bonus, or
20 attendance bonus from July 21, 2022 and continuing into the present; (Non-
21 Exempt Hourly Wage Statement Subclass)

22 Collectively, subclasses eleven (11) and twelve (12) may be referred to as the “Wage
23 Statement Subclass.”

24 (13)all individuals who were employed by JAGUAR FARM LABOR
25 CONTRACTING, INC. or its predecessor, merged or related entities for one or
26 more pay periods in California as a non-exempt, hourly employee and whose
27 employment concluded at any time between January 27, 2020 and continuing
28 into the present. (“Former Employee Class”);

These Classes and Subclasses may all collectively be referred to herein as the “Class”
where appropriate and for ease of reference.

2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*,
on behalf of the State of California and several groups of aggrieved employees defined as
follows:

- 1 (1) all individuals who were employed by JAGUAR FARM LABOR
2 CONTRACTING, INC. or its predecessor, merged or related entities in
3 California as a non-exempt employee (whether paid hourly, piece rate only,
4 and/or piece rate/hourly) or other similar position at any point from July 21,
5 2022 and continuing into the present. (“Non-Exempt Aggrieved Employees”);
- 6 (2) all individuals who were employed by JAGUAR FARM LABOR
7 CONTRACTING, INC. or its predecessor, merged or related entities in
8 California as a non-exempt, hourly employee at any point from July 21, 2022
9 and continuing into the present. (“Non-Exempt Hourly Aggrieved Employees”);
- 10 (3) all individuals who were employed by JAGUAR FARM LABOR
11 CONTRACTING, INC. or its predecessor, merged or related entities in
12 California as a non-exempt employee or other similar position and who worked
13 a shift of eight (8) hours in any one workday and/or more than forty (40) hours
14 in a workweek during a pay period from July 21, 2022 and continuing into the
15 present. (“Overtime Aggrieved Employees”);
- 16 (4) all individuals who were employed by JAGUAR FARM LABOR
17 CONTRACTING, INC. or its predecessor, merged or related entities for one or
18 more pay periods in California as a non-exempt, employee (whether paid
19 hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of
20 more than eight (8) hours in a day and/or forty (40) hours in a week during a
21 period where they also received an incentive payment, piece rate compensation,
22 non-discretionary bonus, production bonus, efficiency bonuses, or attendance
23 bonuses from July 21, 2022 and continuing into the present; (“Incentive Pay
24 Overtime Aggrieved Employees”);

25 Collectively, aggrieved employee groups three (3) and four (4) may be referred to as
26 the “Overtime Aggrieved Employees.”

- 27 (5) all individuals who were employed by JAGUAR FARM LABOR
28 CONTRACTING, INC. or its predecessor, merged or related entities for one or
more pay periods in California as a non-exempt, employee (whether paid
hourly, piece rate only, and/or piece rate/hourly) and whose employment
concluded at any time between July 21, 2022 and continuing into the present.
 (“Late Payment Aggrieved Employees”); and

These groups may all collectively be referred to herein as aggrieved employees and/or all
aggrieved employees where appropriate.

1 3. Plaintiff and the Classes were employed by Defendant JAGUAR FARM LABOR
2 CONTRACTING, INC. and any subsidiaries or affiliated companies and Does 1 through 50 (who
3 include individuals acting on behalf an employer within the meaning of Labor Code § 558.1)
4 within the State of California as a non-exempt, hourly employees at some point between January
5 27, 2019 and continuing into the present. The aggrieved employees were employed by
6 Defendants between July 21, 2022 and the present. Plaintiff is a former employee of Defendants
7 who worked for Defendants at several locations in California including within Kern County.

8 4. At times throughout their employment with Defendants from January 27, 2019
9 and continuing into the present and within the past year, Plaintiff, the Class, and the aggrieved
10 employees worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8)
11 hours in a day, ten (10) hours in a day, twelve (12) hours in a day and/or worked in excess of
12 forty (40) hours in a week or more. Plaintiff, the Classes, and the aggrieved employees worked
13 enough hours either during the workday and/or the workweek to be entitled to overtime wages
14 within the same pay period where they also received an incentive payment, piece rate
15 compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus.

16 5. At times throughout their employment with Defendants from January 27, 2019 and
17 continuing into the present and within the past year, Plaintiff, the Classes, and the aggrieved
18 employees worked enough hours to be eligible to receive overtime wages under IWC Wage Order
19 Nos. 13-2001 and 14-2001 and/or Labor Code section 510.

20 6. Defendants hire employees to work within the state of California who are covered
21 by California Industrial Welfare Commission Occupational Wage Order Nos. 13-2001 and 14-
22 2001. Based upon information and belief, Defendants classified Plaintiff, the Class, and the
23 aggrieved employees as non-exempt for the purposes of overtime.

24 7. Plaintiff, the Wage Statement Subclass, and the aggrieved employees received at
25 least one wage statement between July 21, 2022 and continuing into the present.

26 8. Labor Code § 1197 states the California requirement that employees must be paid
27 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
28 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles

1 “any employee receiving less than the legal minimum wage...to recover in a civil action the
2 unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 13-2001 and
3 14-2001 obligate employers to pay each employee minimum wages for all hours worked.

4 9. Labor Code § 510 requires an employer to compensate an employee who works
5 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
6 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
7 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
8 employees at no less than twice the regular rate of pay when an employee works more than
9 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
10 In accordance with Labor Code § 1194, Plaintiff, the other Class Members, and the aggrieved
11 employees could not agree to work for a lesser wage.

12 10. IWC Wage Order Nos. 13-2001 and 14-2001 provide:

13 (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-
14 half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
15 receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours
16 worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five
17 (55) hours in any one workweek.

18 (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours
19 per workday or fifty (50) hours per workweek unless the employee receives one and one-
20 half (1 1/2) times such employee’s regular rate of pay for all hours worked over nine (9)
21 hours in any one workday or more than fifty (50) hours in any one workweek.

22 (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-
23 half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
24 receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours
25 worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five
26 (45) hours in any one workweek.

27 (d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours
28 per workday or work in excess of forty (40) hours per workweek unless the employee
receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
worked over eight (8) hours in any workday or more than forty (40) hours in any
workweek and double the employee's regular rate of pay for all hours worked over twelve
(12) hours in any one workday.

11. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
standard conditions of labor fixed by the commission shall be the maximum hours of work and

1 the standard conditions of labor for employees. The employment of any employee for longer
2 hours than those fixed by the order or under conditions of labor prohibited by the order is
3 unlawful.”

4 12. At times between January 27, 2019 and continuing into the present including
5 within the past year, Defendants failed to pay Plaintiff, the other Class Members, and the
6 aggrieved employees’ overtime wages at the proper rate. Specifically, Defendants failed to
7 include piece rate compensation, incentive payments, and other non-discretionary bonuses (such
8 as, but not limited to, attendance bonuses, efficiency bonuses and/or production bonuses) when
9 calculating and paying Plaintiff, the other Class Members, and the aggrieved employees’
10 overtime wages. This includes, but is not limited to, due to its common policy and practice of
11 failing to include the compensation associated with the pay code “Incentive” when calculating
12 and paying overtime. For instance, for the pay period of May 21, 2023 to May 27, 2023, Plaintiff
13 earned either piece rate compensation, incentive payments, non-discretionary bonuses, efficiency
14 bonuses, and/or attendance bonuses that were classified under the pay code “Incentive” at the rate
15 of \$0.02 per unit and completed 2,538.80 units resulting in \$38.08 in earnings. In addition,
16 Plaintiff received rest and recovery compensation at the rate of \$20.95 per hour; however,
17 Defendants failed to include either forms of compensation when calculating and paying his
18 overtime wages. Instead, Defendants incorrectly paid Plaintiff’s overtime wages at one and-one-
19 half times (1.5x) his hourly base rate of \$20.00 per hour. As a result, Defendants incorrectly paid
20 Plaintiff’s overtime pay at the rate of one and one-half (1.5x) times his hourly base rate instead of
21 his regular rate. Plaintiff alleges that Defendants engaged in the same conduct with respect to all
22 of the Class Members at times between January 27, 2019 and the present. Plaintiff alleges that
23 Defendants applied the same common policy and engaged in the same common practice to the
24 aggrieved employees during the period of July 21, 2022 through the present.

25 13. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to
26 be violated...any provision regulating hours and days of work in any order of the Industrial
27 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
28 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was

1 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
2 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
3 period for which the employee was underpaid in addition to an amount sufficient to recover
4 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
5 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
6 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
7 not any underpaid wages.

8 14. As to Plaintiff, the Wage Statement Subclass, and the aggrieved employees, from
9 at least July 21, 2022 and continuing into the present, Defendants also failed to provide accurate
10 itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code §
11 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized
12 wage statement in writing showing:

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

26 15. Similarly, Labor Code § 226(e) provides:

27 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
28 employer to comply with subdivision (a) is entitled to recover the greater of all actual
damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney’s fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or
more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
and easily determine from the wage statement alone one or more of the following:

- (i) The amount of the gross wages or net wages paid to the employee during the
pay period or any of the other information required to be provided on the itemized

1 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
2 (a).
3 (ii) Which deductions the employer made from gross wages to determine the net
4 wages paid to the employee during the pay period. Nothing in this subdivision
5 alters the ability of the employer to aggregate deductions consistent with the
6 requirements of item (4) of subdivision (a).
7 (iii) The name and address of the employer and, if the employer is a farm labor
8 contractor, as defined in subdivision (b) of Section 1682, the name and address of
9 the legal entity that secured the services of the employer during the pay period.
10 (iv) The name of the employee and only the last four digits of his or her social
11 security number or an employee identification number other than a social security
12 number.

13 16. Due to Defendants' failure to pay Plaintiff, the Wage Statement Subclass
14 members, and the aggrieved employees all overtime wages (including at the correct rates), the
15 wage statements issued by Defendants do not indicate the correct amount of gross wages earned,
16 the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay
17 period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have
18 violated Labor Code §226(a)(1), (2), (3), (5), and (9) with respect to Plaintiff and all Class
19 Members.

20 17. In addition to violating Labor Code § 226(a), Defendants also knowingly and
21 intentionally failed to pay Plaintiff, the Class, the Wage Statement Subclass, and the aggrieved
22 employees all overtime wages including at the proper rates.

23 18. Moreover, Plaintiff and the Wage Statement Subclass, also suffered legal "injury"
24 for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily
25 determine from the wage statements themselves the information required to be set forth by
26 Section 226(a), the information provided by Defendants were confusing and inaccurate. In
27 addition, Plaintiff and the Wage Statement Subclass were unable to determine at all the total
28 hours worked by the employee, the gross wages earned, the net wages earned, and all applicable
hourly rates in effect during the pay period and the corresponding number of hours worked at
each hourly rate by the employee for the reasons discussed above.

19 19. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in
20 any employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved
2 employees on a weekly basis.

3 20. Due to Defendant’s failure to pay Plaintiff and all aggrieved employees all
4 overtime wages for the reasons discussed above, Defendant failed to timely pay Plaintiff and all
5 aggrieved employees all wages owed within seven (7) days of the close of the payroll period in
6 accordance with Labor Code § 204(d) on a regular and consistent basis.

7 21. Labor Code § 210 provides that “in addition to, an entirely independent and apart
8 from, any other penalty provided in this article, every person who fails to pay the wages of each
9 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
10 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
11 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
12 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
13 the faulty compensation policies and practices described in detail above, Plaintiff and the other
14 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
15 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
16 Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
17 at the proper rate in accordance with a local wage ordinance).

18 22. Under Labor Code §§ 201-202, an employer must provide an employee wages at
19 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §
20 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is
21 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
22 days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487, 492 (1998).

23 23. Defendants terminated Plaintiff in or around late May 2023.

24 24. As described in detail above, Defendant failed to pay Plaintiff, the Former
25 Employee Subclass Members, and the Late Payment Aggrieved Employees all wages owed,
26 including but not limited to all overtime wages owed within the time constraints proscribed in
27 Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants’
28 faulty policies described above, Plaintiff, the Former Employee Subclass, and the Late Payment

1 Aggrieved Employees left their employment with Defendants without being compensated for
2 each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and
3 203.

4 25. Labor Code § 256 is the default civil penalty under PAGA for a violation of Labor
5 Code section. Lab. Code § 256 (“a civil penalty in an amount not exceeding 30 days’ pay as
6 waiting time under the terms of Section 203.”). The California Supreme Court and California
7 Court of Appeal have both specifically recognized the ability of an aggrieved employee to
8 recover civil penalties under Labor Code § 256 for a defendant’s willful violation of Labor Code
9 § 201 and 202 under PAGA. In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th
10 348, 381 (2014), the California Supreme Court acknowledged that PAGA penalties for the
11 untimely payment of wages included the 30 days of pay as waiting time pursuant to Labor Code §
12 256. *See also Esparza v. KS Industries, L.P.* 13 Cal.App.5th 1228, 1242 (2017) (explaining that
13 the Labor Code § 256 penalties only exist if the employer’s failure to timely pay wages upon
14 separation was willful is a “civil penalty”). To the extent permitted by law Plaintiff seeks Labor
15 Code § 2699.3 penalties at either the default amount or the amount proscribed by Labor Code §
16 256 for Defendant’s violations of Labor Code §§ 201 and 202.

17 26. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
18 Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and
19 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*
20 As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor
21 Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from
22 the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the
23 postmark date of the PAGA notice. Plaintiff is therefore, entitled to proceed with a civil action
24 pursuant to Labor Code § 2699.

25 II.

26 JURISDICTION AND VENUE

27 27. This Court has subject matter jurisdiction over all causes of action asserted herein
28 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure

§ 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

28. This Court has personal jurisdiction over Defendant JAGUAR FARM LABOR CONTRACTING, INC. because Defendant has caused injuries in the County of Kern and State of California through their acts, and by their violation of the California Labor Code and California law in Kern County.

29. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operates within California and do business within Kern County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Classes within the State of California and the County of Kern.

30. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

PARTIES

A. PLAINTIFF

31. Plaintiff JESUS MARTINEZ RAMIREZ is a former employee of Defendants who worked for Defendants in Kern County.

32. Plaintiff and the Class were regularly required to:

a. Work overtime hours without receiving the proper amount of compensation;

b. Work without being provided an accurate itemized wage statement that accurately indicates the gross wages earned, the total hours worked by the employee, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

1 c. Were deprived of wages that Defendants knew were due and owing, yet
2 failed to pay at the time of termination and/or within 72 hours of resignation for those former
3 employees who did not provide advance notice; and

4 **B. DEFENDANTS**

5 33. Defendant JAGUAR FARM LABOR CONTRACTING, INC. is a California
6 corporation. Defendant's principal place of business is believed to be 162 RD 172, Delano, CA
7 93215. Upon information and belief, Defendant employed Plaintiff and the Classes within
8 California and in Kern County. Defendant has done and does business throughout the State of
9 California and in Kern County.

10 34. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
12 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
13 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
14 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
15 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
16 capacities of the Defendants designated hereinafter as DOES when such identities become
17 known.

18 35. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
20 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
21 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
22 employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

23 **IV.**

24 **CLASS ACTION ALLEGATIONS**

25 36. Plaintiff brings this action on behalf of herself and all others similarly situated as a
26 Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a Class
27 and Subclasses composed of and defined as follows:
28

- 1 (1) all individuals who were employed by JAGUAR FARM LABOR
2 CONTRACTING, INC. or its predecessor, merged or related entities in
3 California as a non-exempt employee (whether paid hourly, piece rate only,
4 and/or piece rate/hourly) or other similar position at any point from January 27,
5 2019 and continuing into the present (Non-Exempt Class);²
- 6 (2) all individuals who were employed by JAGUAR FARM LABOR
7 CONTRACTING, INC. or its predecessor, merged or related entities in
8 California as a non-exempt, hourly employee at any point from January 27,
9 2019 and continuing into the present (the “Non-Exempt Hourly Subclass”);
- 10 (3) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
11 INC. or its predecessor, merged or related entities in California as a non-exempt
12 employee or other similar position and who worked a shift of 9.5 hours in any one
13 workday and/or more than 55 hours in a workweek during a pay period from January
14 27, 2019 to December 31, 2019. (“2019 General Overtime Subclass”);
- 15 (4) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
16 INC. or its predecessor, merged or related entities for one or more pay periods in
17 California as a non-exempt, employee (whether paid hourly, piece rate only, and/or
18 piece rate/hourly) and who worked a shift of more than 9.5 hours in a day and/or 55
19 hours in a week during a period where they also received an incentive payment, piece
20 rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or
21 attendance bonus from January 27, 2019 to December 31, 2019; (“2019 Incentive Pay
22 Overtime Subclass”);
- 23 (5) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
24 INC. or its predecessor, merged or related entities in California as a non-exempt
25 employee or other similar position and who worked a shift of 9 hours in any one
26 workday and/or more than 50 hours in a workweek during a pay period from January
27 1, 2020 to December 31, 2020. (“2020 General Overtime Subclass”);
- 28 (6) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING,
INC. or its predecessor, merged or related entities for one or more pay periods in
California as a non-exempt, employee (whether paid hourly, piece rate only, and/or
piece rate/hourly) and who worked a shift of more than 9 hours in a day and/or 50
hours in a week during a period where they also received an incentive payment, piece
rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or

² Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25 days or from April 6, 2020 to October 1, 2020. “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”

attendance bonus from January 1, 2020 to December 31, 2020; (“2020 Incentive Pay Overtime Subclass”);

(7) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of 8.5 hours in any one workday and/or more than 45 hours in a workweek during a pay period from January 1, 2021 to December 31, 2021. (“2021 General Overtime Subclass”);

(8) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than 8.5 hours in a day and/or 45 hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from January 1, 2021 to December 31, 2021; (“2021 Incentive Pay Overtime Subclass”);

(9) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING, INC. or its predecessor, merged or related entities in California as a non-exempt employee or other similar position and who worked a shift of eight (8) hours in any one workday and/or more than forty (40) hours in a workweek during a pay period from January 1, 2022 and continuing into the present. (“General Overtime Subclass”);

(10) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received an incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from January 1, 2022 and continuing into the present; (“Incentive Pay Overtime Subclass”);

Collectively, subclasses three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), and ten (10) may be referred to as the “Overtime Subclasses.”

(11) all individuals who were employed by JAGUAR FARM LABOR CONTRACTING, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, employee (whether paid hourly, piece rate only, and/or piece rate/hourly) and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received an incentive payment, piece rate compensation,

1 non-discretionary bonus, production bonus, efficiency bonus, or attendance
2 bonus from July 21, 2022 and continuing into the present; (Non-Exempt Wage
3 Statement Subclass)

4 (12)all individuals who were employed by JAGUAR FARM LABOR
5 CONTRACTING, INC. or its predecessor, merged or related entities for one or
6 more pay periods in California as a non-exempt, hourly employee and who
7 worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a
8 week during a period where they also received an incentive payment, piece rate
9 compensation, non-discretionary bonus, production bonus, efficiency bonus, or
10 attendance bonus from July 21, 2022 and continuing into the present; (Non-
11 Exempt Hourly Wage Statement Subclass)

12 Collectively, subclasses eleven (11) and twelve (12) may be referred to as the “Wage
13 Statement Subclass.”

14 (13)all individuals who were employed by JAGUAR FARM LABOR
15 CONTRACTING, INC. or its predecessor, merged or related entities for one or
16 more pay periods in California as a non-exempt, hourly employee and whose
17 employment concluded at any time between January 27, 2020 and continuing
18 into the present. (“Former Employee Class”);

19 These Classes and Subclasses may all collectively be referred to herein as the “Class”
20 where appropriate and for ease of reference.

21 37. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
22 amend or modify the class description with greater specificity, by division into subclasses, or by
23 limitation to particular issues.

24 38. This action has been brought and may properly be maintained as a class action
25 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
26 community of interest in the litigation and the Proposed Classes are easily ascertainable.

27 **A. Numerosity**

28 39. The potential members of the Proposed Classes as defined are each so numerous
that joinder of all the members of the Proposed Classes is impracticable. While the precise
number of proposed Class Members in each Class has not been determined at this time, Plaintiff
is informed and believes that Defendants currently employ, and during the relevant time periods

1 employed to be more than 500 members or more of the Proposed Class and Subclasses at any
2 given time.

3 40. Plaintiff alleges that Defendants' employment records would provide information
4 as to the number and location of all Proposed Class members. Joinder of all members of the
5 Proposed Class and Subclasses is not practicable.

6 **B. Commonality**

7 41. There are questions of law and fact common to the Proposed Classes³ that
8 predominate over any questions affecting only individual Proposed Class Members. These
9 common questions of law and fact include, without limitation:

10 a. Whether Defendants failed to pay wages and/or overtime compensation
11 and at the correct rate as required by Labor Code § 510 to the Class;

12 b. Whether Defendants violated Labor Code § 226(a) and (e) by failing to
13 provide an accurate itemized wage statements that accurately indicate, the gross wages earned, all
14 deductions from wages, the net wages earned, as well as all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours worked at each hourly rate by the
16 employee to the Wage Statement Subclass;

17 c. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
18 pay compensation due and owing at the time that the Former Employee Class' employment with
19 Defendants concluded;

20 d. Whether Defendants violated § 17200 et seq. of the Business & Professions
21 Code by engaging in the acts previously alleged against the Unfair Competition Class;

22 **C. Typicality**

23 42. The claims of Plaintiff are typical of the claims of the Proposed Class and
24 Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries
25 and damages arising out of and caused by Defendants' common course of conduct in violation of
26 laws, regulations that have the force and effect of law, and statutes as alleged herein.

27 _____
28 ³ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 **D. Adequacy of Representation**

2 43. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
4 competent and experienced in litigating large employment class actions, and have the financial
5 resources to litigate the claims at issue.

6 **E. Superiority of Class Action**

7 44. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
9 practicable, and questions of law and fact common to the Proposed Class predominate over any
10 questions affecting only individual members of the Proposed Class. Each member of the
11 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal
12 policy and/or practice of failing to pay all wages due, failing to provide accurate itemized wage
13 statements, and failing to pay all wages owed upon separation.

14 45. Class action treatment will allow those similarly situated persons to litigate their
15 claims in the manner that is most efficient and economical for the parties and the judicial system.
16 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
17 action that would preclude its maintenance as a class action.

18 **V.**
19 **FIRST CAUSE OF ACTION**
20 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**
21 **LABOR CODE § 510**
22 **[Against All Defendants]**

23 46. Plaintiff, on behalf of himself, the Class, the Non-Exempt Class, the Non-Exempt
24 Hourly Class, the 2019 General Overtime Subclass, the 2019 Incentive Pay Overtime Subclass,
25 the 2020 General Overtime Subclass, the 2020 Incentive Pay Overtime Subclass, 2021 General
26 Overtime Subclass, the 2021 Incentive Pay Overtime Subclass, the General Overtime Subclass,
27 and the Incentive Pay Overtime Subclass realleges and incorporates by reference all previous
28 paragraphs.

 47. Labor Code § 510 requires an employer to compensate an employee who works
more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight

1 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
2 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
3 employees at no less than twice the regular rate of pay when an employee works more than
4 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
5 In accordance with Labor Code § 1194, Plaintiff and the Class could not agree to work for a
6 lesser wage.

7 48. IWC Wage Order Nos. 13-2001 and 14-2001 provide:

8 (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-
9 half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
10 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
11 worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five
12 (55) hours in any one workweek.

12 (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours
13 per workday or fifty (50) hours per workweek unless the employee receives one and one-
14 half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9)
15 hours in any one workday or more than fifty (50) hours in any one workweek.

15 (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-
16 half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
17 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
18 worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five
19 (45) hours in any one workweek.

19 (d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours
20 per workday or work in excess of forty (40) hours per workweek unless the employee
21 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
22 worked over eight (8) hours in any workday or more than forty (40) hours in any
23 workweek and double the employee's regular rate of pay for all hours worked over twelve
24 (12) hours in any one workday.

22 49. In addition, Labor Code § 1197 states the California requirement that employees
23 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
24 local law, and any payment of less than the minimum wage is unlawful.

25 50. Similarly, Labor Code § 1198 provides that "the maximum hours of work and the
26 standard conditions of labor fixed by the commission shall be the maximum hours of work and
27 the standard conditions of labor for employees. The employment of any employee for longer
28

1 hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.”

3 51. As discussed in detail above, at times from January 27, 2019 and continuing into
4 the present, Defendants failed to pay Plaintiff, the Non-Exempt Class, the Non-Exempt Hourly
5 Class, the 2019 General Overtime Subclass, the 2019 Incentive Pay Overtime Subclass, the 2020
6 General Overtime Subclass, the 2020 Incentive Pay Overtime Subclass, 2021 General Overtime
7 Subclass, the 2021 Incentive Pay Overtime Subclass, the General Overtime Subclass, and the
8 Incentive Pay Overtime Subclass overtime wages at the proper rate.

9 52. Based upon information and belief, at times from January 27, 2019 and continuing
10 into the present, Defendants failed to pay Plaintiff, the Non-Exempt Class, the Non-Exempt
11 Hourly Class, the 2019 General Overtime Subclass, the 2019 Incentive Pay Overtime Subclass,
12 the 2020 General Overtime Subclass, the 2020 Incentive Pay Overtime Subclass, 2021 General
13 Overtime Subclass, the 2021 Incentive Pay Overtime Subclass, the General Overtime Subclass,
14 and the Incentive Pay Overtime Subclass members at one and one-half times their regular rate and
15 instead underpaid their overtime wages.

16 53. Defendants conduct, as described above was willful.

17 54. As a result of the unlawful acts of Defendants, Plaintiff, the Class, the Non-
18 Exempt Class, the Non-Exempt Hourly Class, the 2019 General Overtime Subclass, the 2019
19 Incentive Pay Overtime Subclass, the 2020 General Overtime Subclass, the 2020 Incentive Pay
20 Overtime Subclass, 2021 General Overtime Subclass, the 2021 Incentive Pay Overtime Subclass,
21 the General Overtime Subclass, and the Incentive Pay Overtime Subclass have been deprived of
22 wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such
23 amounts, plus interest and penalties thereon, attorneys’ fees, and costs.

24 **VI.**
SECOND CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 226(e)
[Against all Defendants]

26 55. Plaintiff, on behalf of himself and the Wage Statement Subclass, the Non-Exempt
27 Wage Statement Subclass, and the Non-Exempt Hourly Wage Statement Subclass, realleges and
28 incorporates by reference all previous paragraphs and all subsequent paragraphs.

1 56. From at least July 21, 2022 and continuing into the present, Defendants knowing
2 and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Wage
3 Statement Subclass in accordance with Labor Code § 226(a)(1, 2, 3, 5, and 9). Labor Code § 226
4 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
5 statement in writing showing:

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

19 Similarly, Labor Code § 226(e) provides:

20 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
21 employer to comply with subdivision (a) is entitled to recover the greater of all actual
22 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
23 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
24 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
25 award of costs and reasonable attorney's fees.

26 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
27 employer fails to provide a wage statement.

28 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
 employer fails to provide accurate and complete information as required by any one or
 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
 and easily determine from the wage statement alone one or more of the following:

 (i) The amount of the gross wages or net wages paid to the employee during the
 pay period or any of the other information required to be provided on the itemized
 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
 (a).

 (ii) Which deductions the employer made from gross wages to determine the net
 wages paid to the employee during the pay period. Nothing in this subdivision
 alters the ability of the employer to aggregate deductions consistent with the
 requirements of item (4) of subdivision (a).

 (iii) The name and address of the employer and, if the employer is a farm labor
 contractor, as defined in subdivision (b) of Section 1682, the name and address of
 the legal entity that secured the services of the employer during the pay period.

 (iv) 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.

1 57. Due to Defendant's failure to pay Plaintiff and the Class all overtime wages
2 (including at the correct rates), the wage statements issued by Defendants to Plaintiff, the Wage
3 Statement Subclass, the Non-Exempt Wage Statement Subclass, and the Non-Exempt Hourly
4 Wage Statement Subclass do not indicate the correct amount of gross wages earned, the total
5 hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated
7 Labor Code §226(a)(1), (2), (3), (5), and (9).

8 58. In addition to violating Labor Code § 226(a), Defendants also knowingly and
9 intentionally failed to pay Plaintiff, the Class, and the Wage Statement Subclass all overtime
10 wages including at the proper rates.

11 59. Moreover, Plaintiff and the Wage Statement Subclass also suffered legal "injury"
12 for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily
13 determine from the wage statements themselves the information required to be set forth by
14 Section 226(a), the information provided by Defendants were confusing and inaccurate. In
15 addition, Plaintiff and the Wage Statement Subclass were unable to determine at all the total
16 hours worked by the employee, the number of piece-rate units earned and any applicable piece
17 rate if the employee is paid on a piece rate, the gross wages earned, the net wages earned, and all
18 applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee for the reasons discussed above.

20 60. Moreover, Defendants undeniably knew when paying that the wage statements it
21 issued did not include the gross wages earned, the net wages earned, and all applicable hourly
22 rates in effect during the pay period and the corresponding number of hours worked at each
23 hourly rate by the employee for the reasons discussed above. *See Garnett v. ADT LLC* 139 F.
24 Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and
25 intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing
26 total hours worked to plaintiff or other employees paid on commission" even though it believed
27 that employees paid solely on commission or commission and salary "are exempt and therefore
28 we do not record hours on a wage statement.").

61. Defendants also failed to both comply with and create a policy that complied with Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when determining whether or not an employer's violation of Labor Code § 226(a) was knowing and intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section." Defendant also was previously sued for violating Labor Code section 226 before the statutory period applicable to the claims in this Action commenced, but still failed to create a policy that ensured compliance with Labor Code section 226. Accordingly, Defendants' conduct was knowing and intentional within the meaning of Labor Code § 226(e).

62. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff and the Wage Statement Class seek penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

VII.

THIRD CAUSE OF ACTION

WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff and the Former Employee Class]

63. Plaintiff on behalf of himself and the Former Employee Class re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

64. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to former employees in the Class during the actionable period for this cause of action, at or around the time that their employment is terminated.

65. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

66. As described in detail above, Defendants failed to pay Plaintiff and the other Class Members whose employment concluded all overtime wages owed within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Defendants also failed to pay sick pay at the proper rate due to their common policy and practice of failing to include incentive payment, piece rate compensation, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonuses when calculating and paying sick pay. Thus, as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

67. At the time of Plaintiff, the other members of the Former Employee Class' separation from Defendants, the sums were certain and known to Defendants.

68. As a result, Defendants are liable to Plaintiff and the Former Employee Class who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

XII.
FOURTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff, the Class, and the Unfair Competition Class]

69. Plaintiff, on behalf of himself and the Class realleges and incorporates by reference all previous paragraphs.

70. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a “person” within the

1 meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause
2 of action for injunctive relief, restitution, and other appropriate equitable relief.

3 71. Defendants have engaged in unlawful and unfair business practices that violate
4 fundamental public policies of the state of California and the United States of America As a result
5 of its unlawful and unfair business practices, Defendants have forced employees to work under
6 substandard and unlawful conditions in an effort to gain a competitive advantage over law-
7 abiding employers who comply with California's Labor Code.

8 72. Defendants have violated statutes and public policies as alleged herein. Through
9 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
10 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
11 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
12 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
13 privileges guaranteed to all employees under law.

14 73. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
15 violation of § 17200 et seq. of the Business & Professions Code.

16 74. Defendants, by engaging in the conduct herein alleged, either knew or in the
17 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
18 violation of § 17200 et seq. of the Business & Professions Code.

19 75. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the
20 Class, others similarly situated, other businesses, and the general public have been damaged in a
21 sum as may be proven.

22 76. As part of their claims against Defendant, Plaintiffs seek not only the unpaid
23 wages, but also the market value of the loss of the statutory protections and the cost to other
24 employers of providing proper pay, breaks, and complying with the California Labor Code
25 provisions identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162
26 (2015).

27 77. Unless restrained, Defendants will continue to engage in the unlawful conduct as
28 alleged above. Pursuant to the Business & Professions Code, this court should make such orders

1 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
2 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
3 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
4 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
5 Proposed Classes the money Defendants have unlawfully failed to pay.

6 **IX.**

7 **FIFTH CAUSE OF ACTION**

8 **PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF
9 LABOR CODE §§ 201, 202, 203, 204, 206.5, 210, 226, 226.7, 226.3, 246, 510, 512, 558, 1174,
10 1174.5, 1197, 1197.1, 1198, and 2802 and IWC Wage Order Nos. 13-2001 and 14-2001**

11 78. Plaintiff, on behalf of the State of California, realleges and incorporates by
12 reference all previous paragraphs.

13 79. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
14 Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and
15 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*
16 As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor
17 Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from
18 the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the
19 postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with
20 a civil action pursuant to Labor Code § 2699.

21 80. In addition to the Class claims, Plaintiff also alleges PAGA claims that Defendants
22 failed to provide lawful meal periods and rest periods in violation of Labor Code § 226.7.

23 81. Labor Code § 512 requires employers to provide employees with thirty (30)
24 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
25 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
26 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
27 may not employ an employee for a work period of more than ten (10) hours, without providing
28 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
second meal period may not be waived if the total hours worked is more than twelve (12) hours.

1 82. Similarly, IWC Wage Order Nos. 13-2001 and 14-2001 prohibit an employer from
2 “employ[ing] any person for a work period of more than five (5) hours without a meal period of
3 not less than 30 minutes. IWC Wage Order Nos. 13-2001 and 14-2001 further obligate employers
4 to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate
5 of compensation for each workday that the meal period is not provided. Labor Code section 1198
6 prohibits an employer from requiring an employee to work beyond the “standard conditions of
7 labor fixed by the commission...or under conditions of labor prohibited by the order.”

8 83. Labor Code § 226.7 provides “an employer shall not require an employee to work
9 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
10 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC
11 Wage Order Nos. 13-2001 and 14-2001 prohibit an employer from “employ[ing] any person for a
12 work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC
13 Wage Order Nos. 13-2001 and 14-2001 further obligate employers to provide an employee to
14 “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
15 workday that the meal period is not provided. Accordingly, for each day that Plaintiff and all
16 aggrieved employees did not receive compliant meal periods, they were entitled to receive meal
17 period premiums pursuant to Labor Code § 226.7 and Wage Order Nos. 13-2001 and 14-2001.

18 84. Labor Code § 1197 states the California requirement that employees must be paid
19 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
20 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
21 “any employee receiving less than the legal minimum wage...to recover in a civil action the
22 unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 13-2001 and
23 14-2001 obligate employers to pay each employee minimum wages for all hours worked.

24 85. Plaintiff alleges during the PAGA period that Defendants, on at least some
25 occasions, failed to authorize and permit aggrieved employees to receive lawful meal periods,
26 failed to advise them of their right to such meal periods, failed to authorize and permit them to
27 take timely first meal periods. Defendant’s meal period policies and practices also disincentivized
28 and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods

1 within the first five (5) hours of their shift Defendant's understaffing policies and practices also
2 pressured, coerced, and forced employees to take untimely first meal periods and/or forgo meal
3 periods due to a lack of sufficient coverage and/or allotment of time to complete the required or
4 expected tasks. Defendant also failed to authorize and permit aggrieved employees who worked
5 more than five (5) hours, but less than six (6) hours to take a meal period.

6 86. Plaintiff alleges during the PAGA period that Defendants, on at least some
7 occasions, that Defendants failed to authorize and permit the aggrieved employees to receive a
8 second meal period when they worked shifts in excess of ten (10) hours in a day and/or twelve
9 (12) hours in a day.

10 87. Plaintiff alleges during the PAGA period that Defendants, on at least some
11 occasions, Defendants, on occasion, interrupted aggrieved employees' meal periods entitling
12 them both to minimum wage and overtime wages.

13 88. Defendants also failed to pay aggrieved employees' meal period premiums for
14 each workday that the employees did not receive a compliant meal period and/or at the proper
15 rate. Labor Code § 226.7 provides "an employer shall not require an employee to work during a
16 meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
17 regulation, standard, or order of the Industrial Welfare Commission ("IWC").

18 89. Further, on the rare occasion, if any, that Defendants paid a meal period premium
19 during the PAGA period, Defendants had a common policy and practice of failed to pay meal
20 period premiums at the proper rates. This includes, but is not limited to, failing to include the
21 compensation associated with piece rate work, incentive pay, and other non-discretionary pay
22 (such as non-discretionary bonuses) when calculating and paying meal period premiums. This
23 resulted in the underpayment of meal period premiums in violation of Labor Code § 226.7.

24 90. Labor Code § 226.7 provides "an employer shall not require an employee to work
25 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
26 regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage
27 Order Nos. 13-2001 and 14-2001, an employer must authorize and permit all employees to take
28 ten (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus*

1 v. *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
2 employers must relieve employees of all duties and relinquish control over how employees spend
3 their time.”).

4 91. Instead of complying with Labor Code § 226.7 and IWC Wage Order Nos. 13-
5 2001 and 14-2001, Defendants failed, during at least part of the PAGA period, to provide the
6 aggrieved employees with rest periods of not less than ten (10) minutes for every major fraction
7 of four (4) hours worked. Instead, Defendants regularly and consistently required aggrieved
8 employees to forgo rest periods. In fact, it was more common for the aggrieved employees not to
9 receive a rest period than to receive one. Defendants also failed to authorize and permit or provide
10 a second rest period when they worked shifts in excess of six (6) hours—including, but not
11 limited to when the aggrieved employees worked shifts in excess of six (6) hours, but less than
12 eight (8) hours—and failed to authorize and permit employees who worked more than ten (10)
13 hours a third rest period. Defendants also failed to relinquish control over the aggrieved
14 employees during their rest periods, including, but not limited to requiring aggrieved employees
15 to remain on the premises during rest periods.

16 92. Further, on the rare occasion, if any, that Defendants paid a rest period premium,
17 Defendants had a common policy and practice of failed to pay rest period premiums at the proper
18 rates. This includes, but is not limited to, failing to include the compensation associated with
19 piece rate work, incentive pay, and other non-discretionary pay (such as non-discretionary
20 bonuses) when calculating and paying meal period premiums. This resulted in the underpayment
21 of rest period premiums in violation of Labor Code § 226.7.

22 93. During at least part of the PAGA period, Defendant required the aggrieved
23 employees to perform work off-the-clock for which they received no compensation including
24 showing up to work early and performing work while off-the-clock for which no compensation
25 was received, picking up and purchasing supplies (including gloves, scissors, and masks for
26 which no reimbursement was received), and/or washing trays while at home, for obtaining fuel to
27 replace fuel expended while on the clock, for the maintenance of clothing and uniforms, and for
28 donning and doffing uniforms, tools, and protective gear as well as other pre-shift and post-shift

1 activities. Such conduct violated Labor Code §§ 1194, 1197, 1197.1, and 1198. Since Defendants
2 failed to include such time when classifying work hours, Defendants also failed to pay overtime
3 wages at the correct rate and/or at all for some hours in violation of Labor Code §§ 510, 558,
4 1197, 1197.1, and 1198.

5 94. Labor Code §2802 provides that “[a]n employer shall indemnify his or her
6 employee for all necessary expenditures or losses incurred by the employee in direct consequence
7 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
8 even though unlawful, unless the employee, at the time of obeying the directions, believed them
9 to be unlawful.”

10 95. On occasion during at least part of the PAGA period, Defendant required and/or
11 expected aggrieved employees to use their own tools in the discharge of their job duties. By
12 failing to provide Plaintiff and the aggrieved employees with masks, gloves, and scissors,
13 Defendant caused Plaintiff and the other aggrieved employees to make expenditures and incur
14 losses in the direct consequence of the discharge of their job duties.

15 96. Moreover, Defendant also expected Plaintiff and the other aggrieved employees to
16 use their personal vehicles for business purposes and for which they did not receive
17 reimbursement. This includes, but is not limited, to requiring Plaintiff and other aggrieved
18 employees with trucks to move the porta potties used by the employees.

19 97. During at least part of the PAGA period, Defendants also required some of the
20 aggrieved employees to utilize their cell phones in the discharge of their job duties for which they
21 did not receive compensation. Defendants’ conduct in requiring some of the aggrieved employees
22 to engage in the above described activities caused them to incur losses as a direct consequence of
23 their duties. Although some of the aggrieved employees were regularly required to and/or
24 ordered/directed to use their own personal communication devices for work purposes, those
25 aggrieved employees were not provided with any reimbursement for the use of their personal cell
26 phones. Accordingly, Defendant has violated Labor Code §§ 1194, 1197, and 2802.

27 98. Labor Code § 1174 provides that each employer shall keep “payroll records
28 showing the hours worked daily by and the wages paid to...employees employed

1 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
2 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

3 99. As previously explained, Defendants failed to maintain accurate records of the
4 total hours worked by employees (including, but not limited to, the time associated with off-the-
5 clock work and interrupted meal periods) among other issues. Thus, Defendants violated Labor
6 Code §§ 1174 and 1174.5.

7 100. Labor Code § 206.5 provides that “An employer shall not require the execution of
8 a release of a claim or right on account of wages due, or to become due, or made as an advance on
9 wages to be earned, unless payment of those wages has been made. A release required or
10 executed in violation of the provisions of this section shall be null and void as between the
11 employer and the employee.”

12 101. On occasions during the PAGA period, Plaintiff alleges that Defendants required
13 the aggrieved employees to sign certifications and/or a record of their meal periods and hours
14 worked that Defendants knew to be untrue in order to receive their wages in violation of Labor
15 Code § 206.5.

16 102. Defendants also failed to provide reporting time pay to aggrieved employees on
17 occasion, including but not limited to when it rained, resulting in the none payment and/or
18 underpayment of reporting time pay. Such conduct violated Labor Code §§ 201, 202, 203, 204,
19 and 210 among other statutes.

20 103. Labor Code § 246 requires employer to calculate sick leave pay based upon one of
21 the following formulas:

22 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
23 regular rate of pay for the workweek in which the employee uses paid sick time, whether
24 or not the employee actually works overtime in that workweek.

25 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
26 employee’s total wages, not including overtime premium pay, by the employee’s total
27 hours worked in the full pay periods of the prior 90 days of employment.

28 (3) Paid sick time for exempt employees shall be calculated in the same manner as the
employer calculates wages for other forms of paid leave time.

1 Lab. Code § 246.

2 104. Throughout Plaintiff and the aggrieved employees' employment, Defendants failed
3 to include all non-discretionary bonuses, incentive payment/pay, shift differential, and/or piece
4 rates when calculating and paying sick pay. *See Wood v. Kaiser Found. Hosps.*, No. D079528,
5 2023 WL 2198664, at *12 (Cal. Ct. App. Feb. 24, 2023).

6 105. Further, as a result when Plaintiff and the Late Payment Aggrieved Employees
7 employment ended, they left their employment without having received compensation for all of
8 their sick pay that they were owed under Labor Code § 246 and resulting in a violation of Labor
9 Code §§ 201-203. As a result of Defendant's underpayment of sick pay, Plaintiff and the other
10 Late Payment Aggrieved Employees experienced a violation of Labor Code §§ 201-202 upon
11 separation from Defendant. *See Powell v. Walmart Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S.
12 Dist. LEXIS 20777, at *6 (S.D. Cal. Feb. 2, 2021) (denying a motion to dismiss claims under
13 Labor Code section 203 based upon the employer's alleged failure to include incentive pay when
14 calculating and paying sick pay); *accord Flores v. Dart Container Corp.*, No. 2:19-cv-00083
15 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at *7 (E.D. Cal. May 27, 2020).

16 106. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
17 § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 206.5,
18 210, 226, 226.7, 226.3, 246, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 and IWC
19 Wage Order Nos. 13-2001 and 14-2001.

20 107. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
21 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of
22 trial subject to the following formula unless a civil penalty is already proscribed under the Labor
23 Code:

24 \$100 for the initial violation per employee per pay period; and

25 \$200 for each subsequent violation per employee per pay period.

26 108. These penalties will be allocated 75% to the Labor Workforce Development
27 Agency and 25% to the affected employees. These penalties may be stacked separately for each
28 of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business*

1 *Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get
2 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated
3 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of
4 PAGA penalties to award); *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017)
5 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section
6 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section
7 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations
8 of Labor Code §§ 226(a) and 226(e)); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM
9 (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that
10 although the plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be
11 ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same pay period for different
12 Labor Code violations.”); accord *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO)
13 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-
14 cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal.
15 Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS
16 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

17 109. There is currently a split of authority regarding which PAGA penalties apply to
18 violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355
19 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific*
20 *Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to
21 a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates
22 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
23 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
24 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
25 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
26 of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other
27 aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it
28

1 applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or
2 2699 penalties for Defendant's violations of Labor Code § 226(a).

3 110. Labor Code § 210 provides that "in addition to, an entirely independent and apart
4 from, any other penalty provided in this article, every person who fails to pay the wages of each
5 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
6 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
7 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
8 each failure to pay each employee, plus 25% of the amount unlawfully withheld."

9 111. As a result of the faulty compensation policies and practices described in detail
10 above, the State of California is entitled to recover penalties under Labor Code § 210 through
11 PAGA.

12 112. Further, Labor Code § 558 imposes a penalty upon employers "who violates, or
13 causes to be violated...any provision regulating hours and days of work in any order of the
14 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
15 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
16 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
17 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
18 period for which the employee was underpaid..." Based upon the above factual allegations
19 related to overtime violations, Plaintiff and the aggrieved employees are entitled to recover civil
20 penalties under Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup.*
21 *Ct. 8 Cal.5th 175 (2019).*

22 113. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
23 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
24 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
25 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
26 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
27 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
28 period for which the employee is underpaid regardless of whether the initial violation is

1 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
2 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
3 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
4 penalties for violations of Labor Code § 1197.1.

5 114. Labor Code § 256 serves as the civil default penalty for a violation of Labor Code
6 section 203 under PAGA and provides for “a civil penalty in an amount not exceeding 30 days’
7 pay as waiting time under the terms of Section 203. *See Iskanian v. CLS Transportation Los*
8 *Angeles, LLC*, 59 Cal.4th 348, 381 (2014); *see also Esparza v. KS Industries, L.P.* 13 Cal.App.5th
9 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer’s
10 failure to timely pay wages upon separation was willful is a “civil penalty”). To the extent
11 permitted by law Plaintiff seeks Labor Code § 2699.3 penalties at either the default amount or the
12 amount proscribed by Labor Code § 256 for Defendant’s violations of Labor Code §§ 201 and
13 202.

14 115. As described in detail above, Defendants willfully failed to pay Plaintiff and other
15 aggrieved employees whose employment concluded all wages owed, including but not limited to
16 overtime wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of
17 their termination/separation. Thus, as result of Defendants’ faulty policies described above,
18 Plaintiff and all aggrieved employees left their employment with Defendants without being
19 compensated for each and every hour worked at the appropriate rate in violation of Labor Code
20 §§ 201, 202, 203, and 256.

21 **RELIEF REQUESTED**

22 **WHEREFORE**, Plaintiff prays for the following relief:

- 23 1. An Order that this action may proceed and be maintained as a Class Action on
24 behalf of the Classes;
- 25 2. For compensatory damages in the amount of unpaid overtime wages not paid to
26 Plaintiff, each Class Member from January 27, 2019 and continuing into the present as may be
27 proven;

1 3. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code
2 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
3 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
4 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized
5 wage statements issued to Plaintiff and the Wage Statement Subclass from July 21, 2022 and
6 continuing into the present as may be proven;

7 4. An award to Plaintiff and the Former Employee Subclass of waiting time penalties
8 in the amount of up to 30 days' wages;

9 5. For restitution for unfair competition pursuant to Business & Professions Code
10 § 17200 to Plaintiff and the Class for actions, including disgorgement of profits, in an amount as
11 may be proven;

12 6. An order enjoining Defendant and its agents, servants, and employees, and all
13 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
14 Members proper compensation for overtime hours worked and/or at the incorrect rate;

15 7. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
16 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 206.5, 210,
17 226, 226.7, 226.3, 246, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 and IWC
18 Wage Order Nos. 13-2001 and 14-2001;

19 8. An award of pre-judgment and post judgment interest;

20 9. An award providing for payment of costs of suit;

21 10. An award of attorneys' fee, including but not limited to, pursuant to Labor Code
22 §§ 218.5 and 2699 and Code of Civil Procedure § 1021.5; and

23 11. Such other and further relief as this Court may deem proper and just.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff hereby demands a trial of his claims by jury for causes of action 1-3, but not
26 claim 4 (unfair competition) or claim 5 (PAGA) for which a bench trial is required.

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DATED: September 26, 2023

WINSTON LAW GROUP, P.C.

By: David Winston
DAVID S. WINSTON
Attorneys for Plaintiff, the Proposed
Class, and the aggrieved employees