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STK-CV-UOE-2023-0010132

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

TRAVIS SHANLEY, an individual, on behalf
of himself and all other aggrieved employees

Plaintiff,

v.

TRACY LOGISTICS LLC; STOCKTON
LOGISTICS LLC; FRESNO LOGISTICS LLC;
SACRAMENTO LOGISTICS, LLC; C&S
WHOLESALE GROCERS, LLC FORMERLY
C&S WHOLESALE GROCERS INC.; C&S
LOGISTICS OF SACRAMENTO/TRACY LLC;
C&S LOGISTICS OF FRESNO LLC; and DOES
1 through 10, Inclusive,

Defendants.

) Case No.:

) **REPRESENTATIVE ACTION**
) **COMPLAINT UNDER THE PRIVATE**
) **ATTORNEYS GENERAL ACT**
) **("PAGA")**

1 Plaintiff TRAVIS SHANLEY (“Plaintiff”), by and through his attorneys, alleges the
2 following based upon information and belief, the investigation of counsel, and personal knowledge
3 as to the allegations pertaining to himself.

4 **INTRODUCTION**

5 1. On behalf of himself and other aggrieved employees, Plaintiff brings this
6 representative action under the California Private Attorneys General Act of 2004, as codified in Labor
7 Code §§ 2698, *et seq.* (“PAGA”) against Defendants TRACY LOGISTICS LLC; STOCKTON
8 LOGISTICS LLC; FRESNO LOGISTICS LLC; SACRAMENTO LOGISTICS, LLC; C&S
9 WHOLESALE GROCERS, LLC FORMERLY C&S WHOLESALE GROCERS INC.; C&S
10 LOGISTICS OF SACRAMENTO/TRACY LLC; C&S LOGISTICS OF FRESNO LLC; and Does 1
11 through 10 inclusive (collectively “Defendants”) for civil penalties, interest, costs of suit and
12 attorneys’ fees, and all other appropriate relief, resulting from Defendants’ wage-and-hour violations
13 and other unlawful conduct.

14 2. Defendants operate distribution center warehouses throughout the state of California
15 and employ numerous employees at those warehouses. Defendant C&S Wholesale Grocers, LLC
16 formerly C&S Wholesale Grocers Inc. operates these warehouses through its subsidiaries C&S
17 Logistics of Sacramento/Tracy LLC and C&S Logistics of Fresno LLC which in turn operate them
18 through their subsidiaries Tracy Logistics LLC, Stockton Logistics LLC, Fresno Logistics LLC and
19 Sacramento Logistics, LLC.

20 3. Upon information and belief, even though Defendants utilize a web of subsidiaries,
21 the operations of all warehouse facilities in California are subject to the same employment policies,
22 practices, and procedures that emanate from Defendant C&S Wholesale Grocers, LLC formerly C&S
23 Wholesale Grocers Inc. and therefore Plaintiff brings this representative action on behalf of all
24 aggrieved employees at all warehouses in California.

25 4. Plaintiff worked as a non-exempt employee for Defendants at the Stockton, California
26 warehouse from on or around May 25, 2022 through on or around December 14, 2022.

27 5. Defendants compensated Plaintiff at an hourly rate of pay. Defendants also
28 compensated Plaintiff on a regular basis with bonuses.

1 6. Plaintiff worked five days a week during most weeks. Plaintiff regularly worked more
2 than eight hours a day and more than 40 hours a week.

3 7. Defendants denied Plaintiff and other non-exempt employees in California specific
4 rights afforded to them under the California Labor Code, and the applicable Industrial Welfare
5 Commission Wage Order ("IWC Wage Order").

6 8. Defendants failed to authorize and permit Plaintiff and similarly situated employees
7 to take legally mandated rest breaks by providing them breaks of less than 10 minutes. Defendants
8 told Plaintiff and similarly situated employees to work through rest breaks so as to get their
9 performance numbers up. Even when breaks were provided, Plaintiff and similarly situated
10 employees were required to move their pallet jacks across the warehouse before taking their breaks,
11 thereby providing them with less than 10 minutes.

12 9. Defendants also failed to provide full uninterrupted timely meal breaks and failed to
13 provide a second meal break when Plaintiff and similarly situated employees worked shifts of 10 or
14 more hours. Defendants forced employees to work through their meal breaks. Even on occasions
15 when they were provided meal breaks, they did not receive full meal breaks because they were
16 required to move their pallet jacks to the side of the warehouse which counted against their
17 performance time, thereby preventing them from being able to take full meal breaks.

18 10. Furthermore, despite Plaintiff and other aggrieved employees regularly earning
19 bonuses, Defendants did not properly include all those bonuses in the calculation of their regular rates
20 of pay. Therefore, Defendants did not pay Plaintiff and other aggrieved employees overtime pay, sick
21 and vacation pay and meal and rest break premiums at the correct hourly rates.

22 11. Additionally, Defendants required Plaintiff and other aggrieved employees to work
23 off-the-clock, including but not limited to, working through meal breaks or meal breaks being
24 interrupted, working before and after their shifts including the time waiting for security checks after
25 shifts, and the time spent before shifts obtaining and preparing their pallet jacks to be ready on time,
26 and donning and doffing required gear. Defendants did not pay Plaintiff and other aggrieved
27 employees for these hours worked.

28 12. Defendants also required Plaintiff and other aggrieved employees to purchase safety

1 shoes and specialized overalls for work purposes and did not reimburse them for those business
2 expenses.

3 13. Furthermore, Defendants failed to provide sick pay as required by law and failed to
4 properly itemize sick pay accruals on the pay stubs.

5 14. Derivatively, Defendants failed to timely pay Plaintiff and similarly situated
6 employees all wages owed during employment and upon termination of employment and failed to
7 and continues to fail to provide accurate wage statements and maintain accurate records as required
8 by California law. Further the wage statements did not properly state the name and address of the
9 legal entity that is the employer.

10 15. Defendants also violated the California quota laws by failing to provide employees
11 with written descriptions of each quota and any potential adverse employment action that could result
12 from failure to meet the quota. Defendants also violated the quota laws by requiring employees to
13 meet quotas that prevented compliance with meal and rest periods and use of bathroom facilities,
14 including reasonable travel time to and from bathroom facilities, and by taking adverse employment
15 actions against employees, including termination, for failure to meet a quota that did not allow them
16 to take meal and rest periods and use the bathroom facilities, including reasonable travel time to and
17 from bathroom facilities, and for failure to meet a quota that had never been disclosed to them.

18 16. Finally, Defendants failed to provide places of employment that were safe and
19 healthful, by not providing toilet facilities that are accessible to employees at all times.

20 17. Upon information and belief, the above practices are uniform at all warehouses in the
21 State of California and are still ongoing.

22 18. Plaintiff brings this action on behalf of himself and all other non-exempt employees
23 who are or were employed by Defendants in the State of California at distribution center warehouses
24 during the period of July 11, 2022 through the time of trial of this action and who have experienced
25 one or more of the violations alleged herein (“aggrieved employees”).

26 **JURISDICTION AND VENUE**

27 19. This Court has jurisdiction over all causes of action asserted herein pursuant to the
28 California Constitution, Article VI, §10, because this case is a cause not given by statute to other

1 trial courts. The penalties sought by Plaintiff total more than this Court's jurisdictional minimum.

2 20. Plaintiff is a citizen of California because his domicile is in California.

3 21. This Court has jurisdiction over Defendants because they conduct substantial
4 business in California, employ numerous individuals in California, and have intentionally availed
5 themselves of the laws and markets of California through the operation of their business in
6 California.

7 22. Venue is proper in this Court because Defendants transact business in San Joaquin
8 County, and Defendants are otherwise within this Court's jurisdiction for purposes of service of
9 process. On information and belief, Defendants employ numerous individuals throughout San
10 Joaquin County. Furthermore, Defendants committed wage-and-hour violations in this County.

11 23. There is no federal question at issue here for removal under 28 U.S.C. §1331, as the
12 issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage
13 Orders, and Code of Civil Procedure. Further, as a representative action under PAGA, the matter is
14 not subject for removal under 28 U.S.C. §1332(a)-(d). Plaintiff does not seek individual damages, but
15 rather civil penalties, and as such, does not seek damages on his own behalf in an amount greater than
16 \$75,000, or damages for a class in an amount greater than \$5 million.

17 **PARTIES**

18 **A. PLAINTIFF**

19 24. Plaintiff is an individual over the age of eighteen years, and at all times relevant herein
20 was and is, a resident of the County of San Joaquin in the State of California.

21 25. Plaintiff worked at one of Defendants' warehouses in Stockton, California. Plaintiff
22 was employed by Defendants from on or around May 25, 2022 through on or around December 14,
23 2022.

24 **B. DEFENDANTS**

25 26. Defendant Tracy Logistics LLC is a Limited Liability Company of unknown origin
26 with its principal place of business at 4199 Gibraltar Court, Stockton, California 95206.

27 27. Defendant Stockton Logistics LLC is a Delaware Limited Liability Company with its
28 principal place of business in New Hampshire.

1 28. Defendant Fresno Logistics LLC is a Limited Liability Company of unknown origin
2 with its principal place of business at 2797 S. Orange Ave Fresno, California 93725.

3 29. Defendant Sacramento Logistics, LLC is a Limited Liability Company of unknown
4 origin with its principal place of business at either 3771 Channel Drive, Sacramento, California 95691
5 or 8301 Fruitridge Road, Sacramento, California 95826.

6 30. Defendant C&S Wholesale Grocers, LLC formerly C&S Wholesale Grocers Inc. is a
7 Vermont Limited Liability Company with its principal place of business in New Hampshire.

8 31. Defendant C&S Logistics of Sacramento/Tracy LLC is a Delaware Limited Liability
9 Company with its principal place of business in New Hampshire.

10 32. Defendant C&S Logistics of Fresno LLC is a Delaware Limited Liability Company
11 with its principal place of business in New Hampshire.

12 33. On information and belief, Defendants operate distribution center warehouses
13 throughout the State of California and employ numerous employees in those warehouses.

14 34. Based on information and belief, Defendants had the authority to, directly or indirectly,
15 or through an agent or other person, employ or exercise control over Plaintiff's and other aggrieved
16 employees' wages, hours, and working conditions.

17 35. Based on information and belief, wage and hour policies, including those which caused
18 violations of California law alleged in this Complaint, were drafted and administered centrally
19 between the various Defendants. Additionally, Defendants, each, had knowledge of the wage-and-
20 hour violations alleged herein and each defendant had the power to prevent the violations from
21 occurring. Having knowledge of the wage-and-hour violations set forth in this Complaint, Defendants
22 could have but failed to prevent the violations from occurring.

23 36. Plaintiff does not know the true names and capacities of defendants sued herein as
24 DOES 1 through 10, and therefore sues these defendants by such fictitious names. Plaintiff will amend
25 his Complaint to allege the true names and capacities when they are ascertained.

26 37. Plaintiff believes and thereon alleges that each "Doe" Defendant is responsible in some
27 manner for the occurrences herein alleged, and Plaintiff's injuries and damages as herein alleged are
28 directly, proximately and/or legally caused by Defendants and their acts.

1 38. Plaintiff is informed and believes and thereon alleges that the aforementioned DOES
2 are somehow responsible for the acts alleged herein as the agents, employers, representatives or
3 employees of other named Defendants, and in doing the acts herein alleged were acting within the
4 scope of their agency, employment or representative capacity of said named Defendants.

5 39. The tortious acts and omissions alleged herein were performed by Defendants'
6 management level employees. Defendants allowed and/or condoned a continuing pattern of unlawful
7 practices in violation of the California Labor Code, and have caused, and will continue to cause,
8 Plaintiff's economic damage in an amount to be proven at trial.

9 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

10 40. Defendants operate distribution center warehouses throughout the State of California.
11 Workers at those warehouses are provided with pallet jacks and are given assignments to complete.
12 The assignments consist of moving their pallet jacks up and down aisles in enormous warehouses,
13 taking items off the shelves and loading them onto pallets to be ultimately shipped to customers and/or
14 retail stores.

15 **Off-the-clock Work**

16 41. Employees are also required to work time off-the-clock both before and after their
17 shifts.

18 42. Plaintiff and other aggrieved employees are required to be ready to start their
19 assignments at the starting time of their shift. If they are not ready, they are disciplined by Defendants.

20 43. Therefore, employees are required to arrive prior to their shifts in order to claim a pallet
21 jack for the day and prepare it so they can start their assignments on time. They are also required to
22 don their gear. However, employees are not allowed to clock in until the start time of their shifts. This
23 results in unpaid off-the-clock work.

24 44. After the end of their shifts and before they can go home, employees are required to
25 doff their gear and then stop at a security checkpoint, so that security can check to make sure
26 employees are not stealing.

27 **Failure to Accurately Calculate the Regular Rate of Pay and Therefore Failure to Pay all Wages**
28 **at Legally Required Rates**

1 45. Defendants regularly paid various types of bonuses.

2 46. However, Defendants failed to incorporate those bonuses into the appropriate
3 calculations of the regular rate of pay for: overtime premium wages; missed meal and rest period
4 wages; sick leave wages; and vacation wages.

5 **Meal Breaks**

6 47. Defendants utilize a system in which the employee's workday is controlled by a headset
7 that they are required to wear. The headset provides the assignments and tracks the employee's
8 performance rate on the assignments.

9 48. Employees are given a limited amount of time to complete each assignment. If they do
10 not complete their assignments within the time allotted, they receive lower scores, are reprimanded
11 and can be terminated.

12 49. This headset system prevents employees from being able to take their meal and rest
13 breaks.

14 50. The headset system requires employees to state that they are taking a meal break in
15 order to pause the current assignment or avoid being assigned another assignment if the previous one
16 was complete. Once the employee notifies the headset that he or she would like to take a meal break,
17 the headset begins a 30- minute meal period countdown.

18 51. However, in order to clock out for the break, the employee must still clock out on a
19 time clock at the breakroom. It takes approximately 5 or more minutes to go to the break room and
20 the same amount of time to return after the break. Because an employee is required to take a 30-
21 minute meal break on the time clock, this results in the headset recording 40 minutes for a meal break
22 and the employee is penalized 10 minutes on his or her performance, due to this 10 minute
23 discrepancy between the headset and time-clock.

24 52. Because employees are counseled, written up and terminated for even small
25 performance rate issues, this results in employees not taking their breaks.

26 53. Upon information and belief, Defendants modify the time records to reflect that a break
27 was taken when it was not.

28 54. Plaintiff and aggrieved employees are owed premiums for all of these missed meal

1 periods.

2 **Rest Breaks**

3 55. For rest breaks, employees are allocated 15 minutes for each rest break.

4 56. When an employee wants to take a rest break, he or she informs the headset that he or
5 she would like to take a break. The headset begins counting the 15 minutes.

6 57. However, it takes the employee approximately 5 or more minutes each way to go to
7 and from either the restroom or the break room.

8 58. As a result, Plaintiff and other aggrieved employees are only provided with
9 approximately 5-minute rest breaks.

10 59. Plaintiff and other aggrieved employees are owed premiums for those missed rest
11 periods.

12 **Paid Sick Leave and COVID-19 Supplemental Paid Sick Leave**

13 60. California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. 'Paid Sick Days'
14 [sections §§ 245-249] requires employers to provide paid sick leave and COVID-19 supplemental
15 paid sick leave to employees.

16 61. Defendants failed to provide paid sick leave to Plaintiff and other aggrieved employees
17 in accordance with California law.

18 62. In failing to provide paid sick leave and COVID-19 supplemental paid sick leave,
19 Defendants also violated the requirement under Labor Code § 246(i) to provide with the employee
20 wage statements the number of hours earned and used at the appropriate and accurate rates.

21 63. Alternatively, Defendant failed to pay sick leave at the correct rate required by law, and
22 failed to provide accurate notices of accrued benefits as required by law.

23 **Unreimbursed Expenses**

24 64. Defendants also require employees to purchase safety shoes and overalls which they
25 must use when working in the warehouses. Defendants do not reimburse them for the cost of these
26 items.

27
28 / /

1 **Violation of Quota Laws**

2 65. Defendants failed to provide employees with a written description of applicable quotas
3 and any potential adverse employment action that could result from failure to meet the quota.
4 Defendants also required Plaintiff and other aggrieved employees to meet quotas that prevented
5 compliance with meal and rest periods and use of bathroom facilities, including reasonable travel time
6 to and from bathroom facilities. Defendants took adverse employment actions against Plaintiff and
7 other aggrieved employees, including termination, for failure to meet a quota that did not allow them
8 to take meal and rest periods and use the bathroom facilities, including reasonable travel time to and
9 from bathroom facilities, and for failure to meet a quota that had never been disclosed to them as
10 required by Section 2101.

11 **Failure to Provide a Safe and Healthful Workplace**

12 66. Defendants operate using a quota system, which is illegal and can and should be
13 enjoined under Labor Code seq. § 2100. This quota, because it denies proper access to rest breaks and
14 bathroom time, causes employees to have to work at speeds beyond those which are safe and without
15 proper periods of rest, causing unnecessary injuries. Plaintiff suffered one of those such injuries.

16 67. Additionally, California Code of Regulations, Title 8 § 3364 (b) states “Toilet facilities
17 shall be kept clean, maintained in good working order and be accessible to the employees at all times.
18 Where practicable, toilet facilities should be within 200 feet of locations at which workers are
19 regularly employed and should not be more than one floor-to-floor flight of stairs from working
20 areas.”

21 68. Defendants failed to provide places of employment that were safe and healthful for the
22 employees therein, in violation of the Cal/OSHA requirements found within Title 8 of the California
23 Code of Regulations and the aforementioned California Labor Code sections, by not providing toilet
24 facilities that are accessible to employees at all times.

25 **Wage Statements**

26 69. Because of Defendants’ failure to record all hours worked and failure to pay all wages
27 and premiums owed, the wage statements it issues to employees are incorrect.

28 70. The wage statements also do not accurately state the name and address of the employer.

1 **Termination of Employment**

2 71. When Plaintiff's employment with Defendants ended, Defendants failed to pay him all
3 money that he was owed, as a result of not paying him for off-the-clock work, not paying wages at
4 legally required rates and not paying meal and rest break premiums as alleged above.

5 72. Plaintiff is informed and believes that the above practices he experienced were not
6 unique to him but rather were companywide policies and practices at all distribution facilities in the
7 State of California and were suffered by all non-exempt employees.

8 73. Plaintiff is informed and believes that the unlawful wage and hour policies described
9 in this action are set centrally and are applicable through-out California.

10 74. Plaintiff is informed and believes that the unlawful wage and hour policies described
11 in this action are still ongoing.

12 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

13 75. Plaintiff was employed by Defendants during the statutory PAGA period and was
14 aggrieved by one or more of the violations of the California Labor Code described in this complaint.

15 76. Plaintiff was employed by Defendants when Defendants' policies violated California
16 wage and hour law during the statutory period.

17 77. Plaintiff, as an aggrieved employee, brings this action on his own behalf and on behalf
18 of other aggrieved current, former, and future employees of Defendants who work(ed) for Defendants
19 in the state of California, and who are/were subjected to the policies of the Defendants.

20 78. Defendants' systematic pattern of wage and hour violations toward Plaintiff and other
21 aggrieved employees in California include, *inter alia*:

- 22 a. Failure to Pay Wages at the Correct Legal Rate;
- 23 b. Failure to Pay Minimum Wages;
- 24 c. Failure to Pay Overtime and Double Time Wages;
- 25 d. Failure to Authorize and Permit Legally Sufficient Rest Breaks;
- 26 e. Failure to Provide Legally Sufficient Meal Periods;
- 27 f. Failure to Reimburse Business Expenses;
- 28 g. Failure to Provide Paid Sick Leave and Report Sick Leave Accruals;

- h. Failure to Comply with California Quota Laws;
- i. Failure to Provide a Safe and Healthful Workplace;
- j. Failure to Timely Pay Wages;
- k. Failure to Provide Accurate Wage Statements; and
- l. Failure to Pay all Wages due upon Termination of Employment.

Failure to Pay Sick Leave at the Correct Legal Rate:

79. California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. ‘Paid Sick Days’ [sections §§ 245-249] requires employers to provide paid sick leave and COVID-19 supplemental paid sick leave to employees. Labor Code § 246(l)(1)-(2) mandates that sick leave be calculated in the same fashion that overtime base rates are calculated for the pay period sick leave is used, or in a 90-day period in which the sick leave is used. In either case, the rate should be calculated by dividing the sum of all wages by total hours. Labor Code § 248.6 mandates the same calculations for COVID-19 supplemental paid sick leave.

80. As an initial matter, Plaintiff is informed and believes that Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period.

81. Further, even if and when Defendants provided paid sick leave, Defendants refuse to include all wages earned (including bonuses) in the calculations, and instead pays sick leave at the employee’s simple hourly rates. Plaintiff and other aggrieved employees are therefore owed compensation for these improperly paid sick time hours.

82. In failing to pay the proper sick leave rate, Defendants also violated the requirement under Labor Code § 246(i) to provide with the employee wage statements the number of hours earned and used at the appropriate and accurate rates.

Failure to Pay Overtime Premium Wages at the Correct Legal Rate:

83. Labor Code section 510 requires overtime be paid after 8 hours in a day at the rate of no less than one and one-half times the regular rate of pay for an employee. The applicable IWC Wage Order at item 20 provides for the same requirement.

84. Defendants failed to fully compensate Plaintiff and other aggrieved employees for all

1 overtime wages they earned.

2 85. Specifically, Defendants failed to include the earned bonuses when calculating the
3 regular rate of pay in order to calculate overtime compensation.

4 86. Plaintiff is informed and believes, and thereon alleges that the failure of Defendants to
5 fully compensate Plaintiff and other aggrieved employees for overtime work was willful,
6 purposeful, and unlawful and done in accordance with the policies and practices of Defendants'
7 operations.

8 87. Plaintiff and the other aggrieved employees are entitled to recover the unpaid balance
9 of wages owed, penalties, including penalties available pursuant to California Labor Code §558,
10 plus interest, reasonable attorney fees and costs of suit according to the mandate of California Labor
11 Code §§1194, et seq.

12 **Failure to pay Vacation Pay at the Correct Legal Rate:**

13 88. Labor Code § 227.3 provides that "Unless otherwise provided by a collective-
14 bargaining agreement, whenever a contract of employment or employer policy provides for paid
15 vacations, and an employee is terminated without having taken off his vested vacation time, all vested
16 vacation shall be paid to him as wages at his final rate in accordance with such contract of employment
17 or employer policy respecting eligibility or time served; provided, however, that an employment
18 contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.
19 The Labor Commissioner or a designated representative, in the resolution of any dispute with regard
20 to vested vacation time, shall apply the principles of equity and fairness."

21 89. Plaintiff and certain other aggrieved employees have either resigned from Defendants'
22 employ or had their employment terminated by Defendants. At all relevant times, Defendants have
23 had an established written policy, practice, or agreement to provide paid vacation to their employees
24 employed in the State of California wherein employees receive additional compensation in the form
25 of vacation time, which they can use to take time off from work with compensation. Upon resignation
26 or termination, Defendants paid Plaintiff and the other aggrieved employees vested vacation time at
27 an hourly rate of pay that was lower than their final regular hourly rates of pay, because Defendants
28 failed to include earned bonuses when calculating the regular rate of pay, in violation of Labor Code

1 § 227.3.

2 90. Plaintiff and other aggrieved employees are entitled to civil penalties pursuant to Labor
3 Code § 2699(f)(2) for Defendants' failure to pay such vested, but unused vacation time compensation
4 at the correct rate upon resignation or termination, as set forth above, in violation of Labor Code §
5 227.3.

6 **Failure to pay Meal Break Premiums at the Correct Legal Rate;**

7 91. Labor Code § 512(a) states, "An employer may not employ an employee for a work
8 period of more than five hours per day without providing the employee with a meal period of not less
9 than 30 minutes, except that if the total work period per day of the employee is no more than six
10 hours, the meal period may be waived by mutual consent of both the employer and employee. An
11 employer may not employ an employee for a work period of more than 10 hours per day without
12 providing the employee with a second meal period of not less than 30 minutes except that if the total
13 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
14 the employer and the employee only if the first meal period was not waived."

15 92. Section (A) of the "Meal Period" provision of the applicable IWC Wage Order states,
16 "No employer shall employ any person for a work period of more than five (5) hours without a meal
17 period of not less than 30 minutes, except that when a work period of not more than six (6) hours will
18 complete the day's work the meal period may be waived by mutual consent of the employer and the
19 employee. An employer may not employ an employee for a work period of more than ten (10) hours
20 per day without providing the employee with a second meal period of not less than 30 minutes, except
21 that if the total hours worked is no more than 12 hours, the second meal period may be waived by
22 mutual consent of the employer and the employee only if the first meal period was not waived. Unless
23 the employee is relieved of all duty during a 30 minute meal period, the meal period shall be
24 considered and 'on duty' meal period and counted as time worked." Section (D) states "If an
25 employer fails to provide an employee a meal period in accordance with the applicable provisions of
26 this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
27 compensation for each work day that the meal period is not provided."

28 93. Labor Code §1198 states "The maximum hours of work and the standard conditions

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

4 94. Labor Code § 226.7 states: “(b) An employer shall not require an employee to work
5 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
6 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
7 Health Standards Board, or the Division of Occupational Safety and Health.”

8 95. On July 15, 2021, the California Supreme Court held in *Ferra v. Loews Hollywood*
9 *Hotel, LLC*, (2021) 11 Cal. 5th 858, that the term “regular rate of compensation” under § 226.7(c) is
10 equivalent to the term “regular rate of pay” under Labor code § 510(a). Accordingly, the meal and
11 rest break premiums owed must be paid at the same rate as would be required under Labor Code §
12 510(a). On the rare occasions that Defendants actually paid meal break premiums, those premiums
13 were only paid at the basic hourly rate and did not account for any bonuses paid. Accordingly,
14 Defendants violated Labor Code § 226.7(c).

15 96. Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an
16 employer who violates, or causes to be violated, a section of this chapter or any provision regulating
17 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
18 penalty as follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
20 pay period for which the employee was underpaid in addition to an amount sufficient
21 to recover underpaid wages.

22 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
23 employee for each pay period for which the employee was underpaid in addition to an
24 amount sufficient to recover underpaid wages.”

25 **Failure to Pay Minimum Wages:**

26 97. Labor Code section 1194(a) states “Notwithstanding any agreement to work for a lesser
27 wage, any employee receiving less than the legal minimum wage or the legal overtime compensation
28 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount

1 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
2 fees and costs of suit.” Liquidated damages in an amount equal to the wages unlawfully unpaid and
3 interest thereon are provided for under Labor Code section 1194.2.

4 98. Labor Code section 1197 states “The minimum wage for employees fixed by the
5 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
6 and the payment of a lower wage than the minimum so fixed is unlawful.”

7 99. Labor Code section 1197.1 (a) states “Any employer or other person acting either
8 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
9 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
10 of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable
11 to the employee, and any applicable penalties imposed pursuant to Labor Code §203...”

12 100. As provided for in Section 1197.1(a)(1), for any initial violation that is intentionally
13 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
14 the employee is underpaid. For each subsequent violation for the same specific offense, two hundred
15 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
16 underpaid regardless of whether the initial violation is intentionally committed.

17 101. Section (B) of the “Minimum Wages” provision of the applicable IWC Wage Order
18 states “Every employer shall pay to each employee, on the established payday for the period involved,
19 not less than the applicable minimum wage for all hours worked in the payroll period, whether the
20 remuneration is measured by time, piece, commission or otherwise.”

21 102. As set forth above, Defendants required Plaintiff and other aggrieved employees to
22 work off-the-clock both before and after their shifts. Plaintiff and other aggrieved employees regularly
23 worked more than eight hours a day and more than 40 hours a week, however, Defendants did not
24 compensate Plaintiff and other aggrieved employees for the time spent working for Defendants before
25 and after they clocked out.

26 103. As such, Plaintiff and other aggrieved employees are owed wages for those unpaid
27 hours.

28 **Failure to Pay Overtime and Double Time Wages:**

1 104. Labor Code section 510 states "Any work in excess of eight hours in one workday and
2 any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh
3 day of work in any one workweek shall be compensated at the rate of no less than one and one-half
4 times the regular rate of pay for an employee. Any work in excess of 12- hours in one day shall be
5 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any
6 work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of
7 no less than twice the regular rate of pay of an employee."

8 105. Labor Code section 1194(a) states "Notwithstanding any agreement to work for a lesser
9 wage, any employee receiving less than the legal minimum wage or the legal overtime compensation
10 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount
11 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
12 fees and costs of suit."

13 106. Labor Code section 1198 states "The maximum hours of work and the standard
14 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
15 conditions of labor for employees. The employment of any employee for longer hours than those
16 fixed by the order or under conditions of labor prohibited by the order is unlawful."

17 107. Labor Code section 200(a) states "Wages includes all amounts for labor performed by
18 employees of every description, whether the amount is fixed or ascertained by the standard of time,
19 task, piece, commission basis, or other method of calculation."

20 108. Plaintiff alleges that he and other current and former aggrieved employees were not
21 compensated all minimum, regular and overtime wages for all hours or fraction of hours worked.

22 109. Plaintiff regularly worked off the clock before and after his regularly scheduled shifts
23 as discussed above. Plaintiff and other aggrieved employees regularly worked more than eight hours
24 a day and more than 40 hours a week.

25 110. Plaintiff and similarly situated employees are owed overtime and double time premium
26 wages.

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28 / /

1 **Failure to Authorize and Permit Legally Sufficient Rest Breaks**

2 111. Section (A) of the “Rest Periods” provision of the applicable IWC Wage Order states,
3 “Every employer shall authorize and permit all employees to take rest periods, which insofar as
4 practicable shall be in the middle of each work period. The authorized rest period time shall be based
5 on the total hours worked daily at the rate of ten (10) minute net rest, time per four (4) hours or major
6 fraction thereof. However, a rest period need not be authorized for employees whose total daily work
7 time is less than three and one-half (3½) hours. Authorized rest period time shall be counted, as hours
8 worked, for which there shall be no deduction from wages.”

9 112. Labor Code section 226.7 states: “(b) An employer shall not require an employee to
10 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
12 Health Standards Board, or the Division of Occupational Safety and Health.”

13 113. Labor Code section 558 states: “(a) Any employer or other person acting on behalf of
14 an employer who violates, or causes to be violated, a section of this chapter or any provision
15 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
16 to a civil penalty as follows:

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
18 period for which the employee was underpaid in addition to an amount sufficient to recover
19 underpaid wages.

20 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
21 for each pay period for which the employee was underpaid in addition to an amount sufficient
22 to recover underpaid wages.”

23 114. As set forth above, Defendants consistently provided employees with rest periods that
24 were less than 10 minutes.

25 115. For these reasons, Plaintiff and similarly situated employees of Defendants have and
26 are being denied legally sufficient rest breaks.

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1 **Failure to Provide Legally Sufficient Meal Periods**

2 116. Labor Code section 512(a) states, "An employer may not employ an employee for a
3 work period of more than five hours per day without providing the employee with a meal period of
4 not less than 30 minutes, except that if the total work period per day of the employee is no more than
5 six hours, the meal period may be waived by mutual consent of both the employer and employee. An
6 employer may not employ an employee for a work period of more than 10 hours per day without
7 providing the employee with a second meal period of not less than 30 minutes except that if the total
8 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
9 the employer and the employee only if the first meal period was not waived."

10 117. Section (A) of the "Meal Period" provision of the applicable IWC Wage Order states,
11 "No employer shall employ any person for a work period of more than five (5) hours without a meal
12 period of not less than 30 minutes, except that when a work period of not more than six (6) hours will
13 complete the day's work the meal period may be waived by mutual consent of the employer and the
14 employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period
15 shall be considered "on duty" meal period and counted as time worked." Section (8) states "If an
16 employer fails to provide an employee a meal period in accordance with the applicable provisions of
17 this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
18 compensation for each work day that the meal period is not provided."

19 118. Labor Code section 1198 states "The maximum hours of work and the standard
20 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
21 conditions of labor for employees. The employment of any employee for longer hours than those
22 fixed by the order or under conditions of labor prohibited by the order is unlawful."

23 119. Labor Code section 226.7 states: "(b) An employer shall not require an employee to
24 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
25 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
26 Health Standards Board, or the Division of Occupational Safety and Health."

27 120. Labor Code section 558 states: "(a) Any employer or other person acting on behalf of
28 an employer who violates, or causes to be violated, a section of this chapter or any provision

1 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
2 to a civil penalty as follows:

3 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
4 period for which the employee was underpaid in addition to an amount sufficient to recover
5 underpaid wages.

6 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
7 for each pay period for which the employee was underpaid in addition to an amount sufficient
8 to recover underpaid wages.”

9 121. As set forth above, Defendants made it impossible for employees to take meal breaks
10 by penalizing them for taking their full breaks. Furthermore, when meal periods were provided, they
11 were often after the end of the fifth hour of work. As such, Plaintiff and similarly situated employees
12 were not relieved of duty and not provided legally adequate meal breaks.

13 **Failure to Reimburse Expenses**

14 122. Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall indemnify
15 his or her employee for all necessary expenditures or losses incurred by the employee in direct
16 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
17 employer.”

18 123. Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of
19 Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall
20 carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on
21 which the employee incurred the necessary expenditure or loss.”

22 124. Furthermore, Labor Code section 2802(c) states “[f]or purposes of this section, the term
23 ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to,
24 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

25 125. Defendant required Plaintiff and other aggrieved employees to purchase safety shoes
26 and overalls as a condition of employment. Plaintiff and other aggrieved employees were not
27 reimbursed for this necessary expense which was required for the benefit of their employer.
28

1 126. Defendant did not compensate Plaintiff and other aggrieved employees for these costs
2 incurred in the discharge of their duties and they are entitled to recover these expenses. Plaintiff and
3 other aggrieved employees also seek recovery of interest, attorney's fees and costs to the extent
4 allowed by law.

5 **Defendants Failed to Comply with California Quota Laws**

6 127. Labor Code § 2101 provides that each employer that employs 100 or more employees
7 at a single warehouse distribution center in California, or 1,000 employees at one or more warehouse
8 distribution centers in California, shall provide upon hire or within 30 days of the effective date of
9 this part, a written description of each quota to which the employee is subject, including the quantified
10 number of tasks to be performed or materials to be produced or handled, within the defined time
11 period, and any potential adverse employment action that could result from failure to meet the quota.

12 128. Labor Code § 2102 provides that an employee shall not be required to meet a quota that
13 prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel
14 time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or
15 division standards. An employer shall not take adverse employment action against an employee for
16 failure to meet a quota that does not allow a worker to comply with meal and rest periods, or
17 occupational health and safety laws in the Labor Code or division standards, or for failure to meet a
18 quota that has not been disclosed to the employee pursuant to Section 2101.

19 129. Labor Code § 2103 provides:

20 (a) Any actions taken by an employee to comply with occupational
21 health and safety laws in the Labor Code or division standards shall be
22 considered time on task and productive time for purposes of any quota
or monitoring system.

23 (b) Notwithstanding subdivision (a), consistent with existing law, meal
24 and rest breaks are not considered productive time unless the employee
25 is required to remain on call.

26 130. Defendants failed to provide employees with a written description of applicable quotas
27 and any potential adverse employment action that could result from failure to meet the quota.
28 Defendants also required Plaintiff and other aggrieved employees to meet quotas that prevented
compliance with meal and rest periods and use of bathroom facilities, including reasonable travel time

1 to and from bathroom facilities. Defendants took adverse employment actions against Plaintiff and
2 other aggrieved employees, including termination, for failure to meet a quota that did not allow them
3 to take meal and rest periods and use the bathroom facilities, including reasonable travel time to and
4 from bathroom facilities, and for failure to meet a quota that had never been disclosed to them as
5 required by Section 2101.

6 **Defendants Failed to Provided a Safe and Healthful Workplace**

7 131. Labor Code section 6400 states “(a) Every employer shall furnish employment and a
8 place of employment that is safe and healthful for the employees therein.”

9 132. Labor Code section 6402 states “No employer shall require, or permit any employee to
10 go or be in any employment or place of employment which is not safe and healthful.”

11 133. Labor Code Section 6404 states “No employer shall occupy or maintain any place of
12 employment that is not safe and healthful.”

13 134. Labor Code section 2699(f) provides for penalties of \$100 “for each aggrieved
14 employee per pay period for [an] initial violation” and \$200 “for each aggrieved employee per pay
15 period for each subsequent violation.”

16 135. Here, Defendants operate using a quota system, which is illegal and can and should be
17 enjoined under Labor Code seq. § 2100. This quota, because it denies proper access to rest breaks and
18 bathroom time, causes employees to have to work at speeds beyond those which are safe and without
19 proper periods of rest, causing unnecessary injuries. Plaintiff suffered one of those such injuries.

20 136. Additionally, California Code of Regulations, Title 8 § 3364 (b) states “Toilet facilities
21 shall be kept clean, maintained in good working order and be accessible to the employees at all times.
22 Where practicable, toilet facilities should be within 200 feet of locations at which workers are
23 regularly employed and should not be more than one floor-to-floor flight of stairs from working
24 areas.”

25 137. Defendants failed to provide places of employment that were safe and healthful for the
26 employees therein, in violation of the Cal/OSHA requirements found within Title 8 of the California
27 Code of Regulations and the aforementioned California Labor Code sections, by not providing toilet
28 facilities that are accessible to employees at all times.

1 **Failure to Timely Pay Wages**

2 138. Labor Code § 204 subsection (a) states in relevant part “All wages, other than those
3 mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are
4 due and payable twice during each calendar month, on days designated in advance by the employer
5 as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
6 month shall be paid for between the 16th and the 26th day of the month during which the labor was
7 performed, and labor performed between the 16th and the last day, inclusive, of any calendar month,
8 shall be paid for between the 1st and 10th day of the following month.”

9 139. Labor Code § 204 subsection (b)(1) states: “Notwithstanding any other provision of
10 this section, all wages earned for labor in excess of the normal work period shall be paid no later than
11 the payday for the next regular payroll period.”

12 140. The “Minimum Wages” section of the applicable IWC Wage Order provides every
13 employer shall pay to each employee, on the established payday for the period involved, not less than
14 the applicable minimum wage for all hours worked in the payroll period.

15 141. Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one
16 hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred
17 dollars (\$200) for each subsequent violation, or willful and intentional violation, plus 25 percent of
18 the amount unlawfully withheld.

19 142. Due to Defendants not paying correct legal rates as alleged above, Defendants do not
20 pay all wages. In addition, Defendants fail to pay meal and rest break premiums. Defendants failed
21 to pay Plaintiff all minimum, regular, overtime, and meal and rest period wages due and owing either
22 on the regular paydays or the payday for the next payroll period. Defendants willfully failed to pay
23 all wages when required by § 204 of the Labor Code. Therefore, Defendants owe penalties to all
24 affected employees including Plaintiff.

25 **Failure to Provide Accurate Wage Statements:**

26 143. Labor Code § 226(a) states in pertinent part that every employer shall provide an
27 accurate itemized statement in writing with respect to each one of its employees showing: 1) gross
28 wages earned; 2) total hours worked by an employee, except for any employee whose compensation

1 is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
2 Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece
3 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
4 deductions, provided that all deductions made on written orders of the employee may be aggregated
5 and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the
6 employee is paid; (7) the name of the employee and the last four digits of his or her social security
7 number or an employee identification number other than a social security number; (8) the name and
8 address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during
9 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

10 144. Labor Code § 226.3 provides that “Any employer who violates subdivision (a) of
11 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
12 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
13 violation in a subsequent citation for which the employer fails to provide the employee a wage
14 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

15 145. In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual damages
16 or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation
17 in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Plaintiff is entitled to
18 an award of costs and reasonable attorney's fees.

19 146. Section (B) of the “Records” provision of the applicable IWC Wage Order states that
20 “Every employer shall semimonthly or at the time of each payment of wages furnish each employee,
21 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately,
22 an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for
23 which the employee is paid; (3) the name of the employee or the employee’s social security number;
24 and (4) the name of the employer, provided all deductions made on written orders of the employee
25 may be aggregated and shown as one item.”

26 147. Labor Code § 1174(d) provides that an employer must keep, at a central location in
27 the state or at the plants or establishments at which employees are employed, payroll records showing
28 the hours worked daily by and the wages paid to, employees employed at the respective

1 establishments. These records shall be kept on file for not less than three years. Labor Code § 1174.5
2 provides for a civil penalty of five hundred dollars (\$500) for an employer who willfully fails to
3 maintain the records pursuant to Labor Code section 1174(d).

4 148. Sections (7)(A)(4) and (5) of the “Records” provision of the applicable IWC Wage
5 Order provides that employers shall keep accurate information with respect to each employee,
6 including total wages paid each payroll period, total hours worked during the payroll period, and
7 applicable rates of pay, as well as time records showing when each employee begins and ends each
8 work period. The time records must also show meal periods, split shift intervals, and total daily hours
9 worked.

10 149. Defendants failed to maintain records as set forth in § 1174 of the Labor Code and the
11 “Records” section of the applicable IWC Wage Order including but not limited to, accurately
12 recording total hours worked, total wages paid and applicable rates of pay.. Due to Defendants not
13 paying minimum wages for all hours worked or overtime, double time, sick leave, and meal and rest
14 period premiums, Defendants do not record proper hours and wages, and do not provide wage
15 statements accurately accounting of hours, wages, deductions, etc., Defendants do not record proper
16 hours and wages, and do not provide legally compliant wage statements accurately accounting for
17 hours, wages, deductions, etc. Further, as stated above, the wage statements do not properly state
18 the name and address of the legal entity that is the employer.

19 150. Labor Code §§226(e) and (h) provide for the remedy for wage statement violations:

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

26 (h) An employee may also bring an action for injunctive relief to ensure compliance
27 with this section, and is entitled to an award of costs and reasonable attorney’s fees.

28 151. By knowingly and intentionally failing to keep accurate time records as required by

1 Labor Code §§226, 1174(d), and the applicable IWC Wage Order, ¶7, Defendants have injured
2 Plaintiff and the other aggrieved employees and made it difficult to calculate the unpaid wages
3 owed, and losses and expenditures not indemnified by Defendants (including wages, interest and
4 penalties thereon) due Plaintiff and the other aggrieved employees.

5 **Failure to Pay All Wages due upon Termination of Employment:**

6 152. Labor Code § 201 states “If an employer discharges an employee, the wages earned
7 and unpaid at the time of discharge are due and payable immediately.”

8 153. Labor Code § 202 states “If an employee not having a written contract for a definite
9 period quits his or her employment, his or her wages shall become due and payable not later than 72
10 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to
11 quit, in which case the employee is entitled to his or her wages at the time of quitting.”

12 154. Labor Code § 203(a) states, in relevant part; “If an employer willfully fails to pay,
13 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
14 wages of an employee who is discharged or who quits, the wages of the employee shall continue as a
15 penalty from the due date thereof at the same rate until paid or until an action therefore is commenced;
16 but the wages shall not continue for more than 30 days.”

17 155. Labor Code § 204(a) states in pertinent part “All wages... earned by any person in any
18 employment are due and payable twice during each calendar month, on days designated in advance
19 by the employer as the regular paydays.”

20 156. Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one
21 hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred
22 dollars (\$200) for each subsequent violation, plus 25 percent of the amount unlawfully withheld.

23 157. The “Minimum Wages” section of the applicable IWC Wage Order provides every
24 employer shall pay to each employee, on the established payday for the period involved, not less than
25 the applicable minimum wage for all hours worked in the payroll period.

26 158. Defendants failed to pay Plaintiff and other aggrieved employees all minimum,
27 regular, overtime, double time, sick leave and meal and rest period wages due and owing during and
28 upon termination of employment. Defendants willfully failed to pay all wages when required by §§

201 and 202 of the Labor Code. Therefore, Defendants owe waiting time penalties to all affected employees including Plaintiff.

159. Defendants failed to pay earned wages to Plaintiff and other aggrieved employees upon their termination and/or within 72 hours of the last day of their employment with Defendants. More than 30 days have passed since Plaintiff and other aggrieved employees have been terminated and/or quit Defendants' employ.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Against All Defendants)

[Cal. Labor Code §§ 2698-2699.5]

160. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

161. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and former employees of Defendants pursuant to the procedures specified in California Labor Code §2699.3, because Plaintiff was employed by Defendants and the alleged violations of the California Labor Code were committed against Plaintiff.

162. Pursuant to the PAGA, Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 203, 210, 248.5, 558, 1197.1 and the applicable IWC Wage Order, from Defendant for the violations set forth above, including but not limited to violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2101-2104, 2802, 6400, 6402 and 6404.

163. Plaintiff seeks civil penalties pursuant to the PAGA for violations of the Labor Code, including:

- a. Failure to pay regular and overtime wages for all hours worked (Labor Code §§ 200, 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198, and the applicable IWC Wage Order);

- 1 b. Failure to calculate a legally sufficient regular rate, and therefore:
- 2 i. Failure to pay overtime premium wages at legally sufficient rates (Labor Code
- 3 § 510; *Alvarado v Dart Container*, (2018), 4 Cal.5th 542);
- 4 ii. Failure to pay vacation pay at legally sufficient rates (Labor Code § 227.3);
- 5 iii. Failure to pay sick leave and COVID-19 supplemental sick leave at legally
- 6 sufficient rates (Labor Code §§ 246(l)(1)-(2) and 248.5); and
- 7 iv. Failure to pay rest and meal break premium wages at legally sufficient rates
- 8 (Labor Code §§ 226.7, 512(a), 558, 1198; *Ferra v. Loews Hollywood Hotel,*
- 9 *LLC*, (2021) 11 Cal. 5th 858).
- 10 c. Failure to pay sick leave and COVID-19 supplemental sick leave and to provide
- 11 notice of accrued sick leave available (Labor Code §§ 246(l)(1)-(2) and 248.5);
- 12 d. Failure to provide meal breaks (Labor Code §§ 226.7, 512, 558 and the applicable
- 13 IWC Wage Order);
- 14 e. Failure to authorize and permit rest breaks (Labor Code §§ 226.7, 558 and the
- 15 applicable IWC Wage Order);
- 16 f. Failure to reimburse business expenses (Labor Code § 2802);
- 17 g. Failure to comply with California quota laws (Labor Code §§ 2101-2104);
- 18 h. Failure to provide a safe and healthful workplace (Labor Code §§ 6400- 6404 and
- 19 California Code of Regulations, Title 8 § 3364 (b));
- 20 i. Failure to pay wages in a timely fashion (Labor Code §§ 204, and 210);
- 21 j. Failure to provide accurate wage statements (Labor Code §§ 226(a), 226(e)(1),
- 22 226.3, 1174, 1174.5, and the applicable IWC Wage Order); and
- 23 k. Failure to pay all wages due upon termination of the employment relationship (Labor
- 24 Code §§ 201, 202, 203, 204, 1198, 2699 et seq., and the “Minimum Wages” Section
- 25 of the applicable IWC Wage Order).

26 164. Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant

27 to California Labor Code § 2699(g)(1).

28 165. Plaintiff has satisfied the requirements of Labor Code § 2699.3. On July 11, 2023,

1 Plaintiff sent notice to the California Labor and Workforce Development Agency (LWDA) and
2 Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA)
3 notifying them of the specific violations and the facts and theories supporting those violations.
4 Plaintiff also provided Defendants notice of this "PAGA Letter" by certified mail. Sixty-five days
5 have elapsed since Plaintiff notified the LWDA and Cal/OSHA, and neither the LWDA nor
6 Cal/OSHA has provided notice that it intends to investigate the claims.

7 166. Further, for certain violations, Labor Code § 2699.3 provides that "the employer may
8 cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the
9 aggrieved employee or representative. The employer shall give written notice within that period of
10 time by certified mail to the aggrieved employee or representative and by online filing with the
11 agency if the alleged violation is cured, including a description of actions taken, and no civil action
12 pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day
13 period, the employee may commence a civil action pursuant to Section 2699." Lab. Code, §
14 2699.3(c)(2)(A). Labor Code § 2699(d) states that "[f]or purposes of this part, 'cure' means that the
15 employer abates each violation alleged by any aggrieved employee, the employer is in compliance
16 with the underlying statutes as specified in the notice required by this part, and any aggrieved
17 employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall
18 only be considered cured upon a showing that the employer has provided a fully compliant,
19 itemized wage statement to each aggrieved employee for each pay period for the three-year period
20 prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section
21 2699.3." Lab. Code, § 2699(d). Plaintiff has not received notice from Defendants that any of the
22 alleged violations were cured within the statutory period. Plaintiff has, therefore, exhausted his
23 administrative remedies as required by Labor Code §2699.3.

24 167. Attached as Exhibit 1 to this Complaint is Plaintiff's PAGA Letter.

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WHEREFORE Plaintiff prays for the following relief:

1. For civil penalties pursuant to the PAGA (Labor Code 2698 et seq.);
2. For costs of suit and attorneys' fees as permitted by law, including those available pursuant to Labor Code section 2699(g);
3. For an award of interest, including prejudgment interest, at the legal rate as permitted by law;
4. For such other and further relief as the Court deems proper and just under all the circumstances.

DATED: September 19, 2023

BEN TRAVIS LAW, APC

HEWGILL COBB & LOCKARD, APC



Justin Hewgill, Esq.
Attorneys for Plaintiff

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EXHIBIT 1



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July 5, 2023

Via LWDA Website:

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Via Email:

Department of Industrial Relations
Division of Occupational Safety and Health
4206 Technology Drive, Ste. 3
Modesto, CA 95356
DOSHMOD@dir.ca.gov

Re: Travis Shanley v. Tracy Logistics LLC et al; Written Notice Under Labor Code § 2699.3

Dear PAGA Administrator and Cal/OSHA District Staff:

We represent Travis Shanley (“Claimant”), who is a former non-exempt employee of Tracy Logistics LLC. Claimant sends this letter on behalf of himself and other aggrieved employees who were or are employed by Tracy Logistics LLC, Stockton Logistics LLC, Fresno Logistics LLC, Sacramento Logistics, LLC, C&S Wholesale Grocers, LLC formerly C&S Wholesale Grocers Inc., C&S Logistics of Sacramento/Tracy LLC and C&S Logistics of Fresno LLC (collectively referred to as “Defendants”).

This letter shall serve as our client’s written notice to the Labor and Workforce Development Agency and the Division of Occupational Safety and Health of the Labor Code violations he claims Defendants committed against him and all other current and former non-exempt employees of Defendants who worked at warehouses in California. Our client provides this written notice in accordance with the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, et seq. Our client desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699, and by way of this letter, our client also intends to represent all other current and former non-exempt employees of Defendants in California who have suffered at least one of the violations described herein during the relevant period.

A copy of this letter, along with the \$75.00 filing fee is being uploaded on the LWDA's website for this purpose contemporaneously with the certified mailing of this letter to Defendants.

FACTUAL BACKGROUND

Defendants operate warehouses throughout the state of California and employ numerous employees at those warehouses. Defendant C&S Wholesale Grocers, LLC formerly C&S Wholesale Grocers Inc. operates these warehouses through its subsidiaries C&S Logistics of Sacramento/Tracy LLC and C&S Logistics of Fresno LLC which in turn operate them through their subsidiaries Tracy Logistics LLC, Stockton Logistics LLC, Fresno Logistics LLC and Sacramento Logistics, LLC

Upon information and belief, even though Defendants utilize a web of subsidiaries, the operations of each warehouse facility in California is subject to the same employment policies, practices, and procedures that emanate from Defendant C&S Wholesale Grocers, LLC formerly C&S Wholesale Grocers Inc. and therefore Claimant seeks to represent all former and current employees at all warehouses in California.

Claimant worked as a non-exempt employee for Defendants at the Stockton, California warehouse from on or around May 25, 2022 through on or around December 14, 2022. Defendants compensated Claimant at an hourly rate of pay. Defendants also compensated Claimant on a regular basis with bonuses. Claimant worked five days a week during most weeks. Claimant regularly worked more than eight hours a day and more than 40 hours a week.

Defendants denied Claimant and other non-exempt employees in California specific rights afforded to them under the California Labor Code, and the applicable Industrial Welfare Commission Wage Order ("IWC Wage Order").

Defendants failed to authorize and permit Claimant and similarly situated employees to take legally mandated rest breaks by providing them breaks of less than 10 minutes. Defendants told Claimant and similarly situated employees to work through rest

breaks so as to get their performance numbers up. Even when breaks were provided, Claimant and similarly situated employees were required to move their pallet jacks across the warehouse before taking their break, thereby providing them with less than 10 minutes.

Defendants also failed to provide full uninterrupted timely meal breaks and failed to provide a second meal break when Claimant and similarly situated employees worked shifts of 10 or more hours. Defendants forced employees to work through their meal breaks. Even on occasions when they were provided meal breaks, they did not receive full meal breaks because they were required to move their pallet jacks to the side of the warehouse which counted against their performance time, thereby preventing them from being able to take full meal breaks.

Furthermore, despite Claimant and other aggrieved employees regularly earning bonuses, Defendants did not properly include all those bonuses in the calculation of their regular rates of pay. Therefore, Defendants did not pay Claimant and other aggrieved employees overtime pay, sick and vacation pay and meal and rest break premiums at the correct hourly rates.

Additionally, Defendants required Claimant and other aggrieved employees to work off-the-clock, including but not limited to, working through meal breaks or meal breaks being interrupted, working before and after their shifts including the time waiting for security checks after shifts, and the time spent before shifts obtaining and preparing their pallet jacks to be ready on time, and donning and doffing required gear. Defendants did not pay Claimant and other aggrieved employees for these hours worked.

Defendants also required Claimant and other aggrieved employees to purchase safety shoes and specialized overalls for work purposes and did not reimburse them for those business expenses.

Furthermore, Defendants failed to provide sick pay as required by law and failed to properly itemize sick pay accruals on the pay stubs.

Derivatively, Defendants failed to timely pay Claimant and similarly situated employees all wages owed during employment and upon termination of employment and failed to and continues to fail to provide accurate wage statements and maintain accurate records as required by California law. Further the wage statements did not properly state

the name and address of the legal entity that is the employer

Defendants also violated the California quota laws by failing to provide employees with written descriptions of each quota and any potential adverse employment action that could result from failure to meet the quota. Defendants also violated the quota laws by requiring employees to meet quotas that prevented compliance with meal and rest periods and use of bathroom facilities, including reasonable travel time to and from bathroom facilities, and by taking adverse employment actions against employees, including termination, for failure to meet a quota that did not allow them to take meal and rest periods and use the bathroom facilities, including reasonable travel time to and from bathroom facilities, and for failure to meet a quota that had never been disclosed to them.

Finally, Defendants failed to provide places of employment that were safe and healthful, by not providing toilet facilities that are accessible to employees at all times.

FACTUAL BASES & LEGAL THEORIES

SUPPORTING ALLEGED VIOLATIONS OF THE LABOR CODE

Claimant alleges that Defendants' policies, procedures and workplace culture caused various and wide-ranging labor code provision violations, including but not limited to Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2101-2104, 2802, 6400, 6402 and 6404.

- 1. Defendants failed to pay Claimant and similarly situated employees paid sick leave and COVID-19 supplemental paid sick leave; failed to pay Claimant and similarly situated employees sick leave and COVID-19 supplemental paid sick leave at the correct legal rate; and failed to properly notice Claimant and similarly situated employees of the sick leave they had and have accrued. (Violation of Labor Code §§ 246 through 248.6).**

a. Defendants had and have no policy of providing Sick Leave.

California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. 'Paid Sick Days' [sections §§ 245-249] requires employers to provide paid sick leave and COVID-19 supplemental paid sick leave to employees.

Defendants failed to provide paid sick leave to Claimant and other aggrieved employees in accordance with California law.

In failing to pay sick leave, Defendants also violated the requirement under Labor Code § 246(i) to provide with the employee wage statements the number of hours earned and used at the appropriate and accurate rates.

b. Alternatively, Defendants failed and fail to pay Sick Leave at a legally sufficient rate.

California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. ‘Paid Sick Days’ [sections §§ 245-249] requires employers to provide paid sick leave and COVID-19 supplemental paid sick leave to employees. Labor Code § 246(l)(1)-(2) mandates that sick leave be calculated in the same fashion that overtime base rates are calculated for the pay period sick leave is used, or in a 90-day period in which the sick leave is used. In either case, the rate should be calculated by dividing the sum of all wages by total hours. Labor Code § 248.6 mandates the same calculations for COVID-19 supplemental paid sick leave.

As an initial matter, Claimant is informed and believes that Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period.

Further, even if and when Defendants provided paid sick leave, Defendants refused to include all wages earned (including bonuses) in the calculations, and instead paid sick leave at the employees’ simple hourly rates. Claimant and similarly situated employees are therefore owed compensation for these improperly paid sick time hours.

In failing to pay the proper sick leave rate, Defendants also violated the requirement under Labor Code § 246(i) to provide with the employee wage statements the number of hours earned and used at the appropriate and accurate rates.

c. Defendants fail to provide accurate notice of accrued Sick Leave.

Finally, Defendants are in violation of Labor Code § 246(i) because the wage statements provided to Claimant and similarly situated employees do not accurately reflect the sick leave accruals.

Claimant will seek all available remedies, including PAGA penalties as provided

for by California law.

2. Defendants failed to pay Claimant and similarly situated employees overtime premium wages at the correct legal rate (Violation of Labor Code §§ 200, 204, 210, 510, 1194, 1194.2, 1197, 1197.1 and 1198).

The fundamental right of an employee in the state of California to be paid wages in a timely manner for their work is established by Labor Code § 204, while Labor Code § 1197 requires employers to pay their employees the fixed minimum wage as set by the commission. Pursuant to Labor Code § 1198, it is unlawful to employ persons for more than eight hours per day or forty hours per workweek without compensating them at the rate of pay either time and one half or two times that person's regular rate of pay depending on the number of hours worked. Pursuant to Labor Code § 200(a), wages includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. An employee is permitted to recover any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked under Labor Code § 1194. As required by Labor Code § 1197.1, an employer must pay a civil penalty if it causes an employee to be paid a wage lower than that of the fixed minimum. *See also* the applicable IWC Wage Order, item 20. Labor Code § 210 provides for an additional civil penalty, independent and apart from any other penalty.

An employee's "regular rate of pay" for purposes of Labor Code § 510 and the IWC wage orders is not the same as the employee's straight time rate (i.e., his or her normal hourly wage rate). Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v Dart* (2019) 4 Cal 5th 542. Defendants, however, do not comply with the law by including bonuses in the calculation of the regular rate of pay. Rather, Defendants paid Claimant and other aggrieved employees overtime pay based on their basic hourly rates. Claimant and similarly situated employees are owed unpaid overtime premiums.

Labor Code § 558 states: "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

3. Defendants failed to pay Claimant and similarly situated employees vacation pay at the correct and legal “regular rate of pay.” (Violation of Labor Code § 227.3).

Labor Code § 227.3 provides that “Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

Claimant and certain other Aggrieved Employees have either resigned from Defendants’ employ or had their employment terminated by Defendants. At all relevant times, Defendants has had an established written policy, practice, or agreement to provide paid vacation to its employees employed in the State of California wherein employees receive additional compensation in the form of vacation time, which they can use to take time off from work with compensation. Upon resignation or termination, Defendants paid Claimant and the other Aggrieved Employees vested vacation time at an hourly rate of pay that was lower than their final regular hourly rates of pay, because Defendants failed to

include earned bonuses when calculating the regular rate of pay, in violation of Labor Code § 227.3.

Claimant and other aggrieved employees are entitled to civil penalties pursuant to Labor Code § 2699(f)(2) for Defendants' failure to pay such vested, but unused vacation time compensation at the correct rate upon resignation or termination, as set forth above, in violation of Labor Code § 227.3.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

4. Defendants failed to pay Claimant and similarly situated employees missed meal and rest break premiums at the correct legal "regular rate of pay."

Labor Code § 512(a) 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."

Section (A) of the "Meal Period" provision of the applicable IWC Wage Order states, "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. 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. Unless the employee is relieved of all duty during a 30 minute meal

period, the meal period shall be considered and ‘on duty’ meal period and counted as time worked.” Section (D) states “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 work day that the meal period is not provided.”

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.”

Labor Code § 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.”

On July 15, 2021, the California Supreme Court held in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, that the term “regular rate of compensation” under § 226.7(c) is equivalent to the term “regular rate of pay” under Labor code § 510(a). Accordingly, the meal and rest break premiums owed must be paid at the same rate as would be required under Labor Code § 510(a). On the rare occasions that Defendants actually paid meal or rest break premiums, those premiums were only paid at the basic hourly rate and did not account for any bonuses paid. Accordingly, Defendants violated Labor Code § 226.7(c).

Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

5. Defendants failed to pay all Regular and Overtime Wages (Off-the-Clock Work). (Labor Code §§ 200, 204, 510, 1194 & 1198)

Labor Code section 1194(a) states “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.” Liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon are provided for under Labor Code section 1194.2.

Labor Code section 1197 states “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

Labor Code section 1197.1 (a) states “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Labor Code §203...”

As provided for in Section 1197.1(a)(1), for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Labor Code section 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."

Section (B) of the "Minimum Wages" provision of the applicable IWC Wage Order states "Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission or otherwise."

As set forth above, Defendants required Claimant and other aggrieved employees to work off-the-clock both before and after their shifts. Claimant and other aggrieved employees regularly worked more than eight hours a day and more than 40 hours a week, however, Defendants did not compensate Claimant and other aggrieved employees for the time spent working for Defendants before and after they clocked out.

As such, Claimant and other aggrieved employees are owed unpaid hours. Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

6. Defendants refused and failed to provide legally compliant meal periods or compensation in lieu thereof (Violation of Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order).

Pursuant to Labor Code § 512, no employer shall employ any person for a work period in excess of five (5) hours without providing a meal period of at least thirty (30) minutes. *See also* the applicable IWC Wage Order, item 11. During this meal period of no less than thirty (30) minutes, the employer must completely relinquish any and all control over the employee and the employee must not engage in any work-related activity for the employer. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. If the employee performs any work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the

law. *Id.* Additionally, California law does not permit an employer to employ an individual for a work period in excess of ten (10) hours without providing a second meal period of at least thirty (30) minutes. Labor Code § 512; the applicable IWC Wage Order, item 11. If the employer fails to provide an employee with a legally compliant meal period, 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 period was not provided. Labor Code § 226.7; the applicable IWC Wage Order, item 11.

Claimant contends that as a policy, practice, guideline and/or procedure, Defendants failed to provide meal breaks to its employees. Specifically, Defendants made it impossible for employees to take meal breaks by penalizing them for taking their full breaks. Furthermore, when meal periods were provided, they were often after the end of the fifth hour of work. As such, Claimant and similarly situated employees were not relieved of duty and not provided legally adequate meal breaks. Consequently, Claimant is entitled to receive one additional hour of pay at his regular rate of compensation for each day a compliant rest or meal period was not provided.

Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

7. Defendants refused and failed to authorize and permit legally compliant rest periods or compensation in lieu thereof (Violation of Labor Code § 226.7 and the applicable IWC Wage Order).

The applicable IWC Wage Order, item 12 requires employers to authorize and permit off-duty rest periods during which an employee must be relieved of any and all work-related duties. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. Additionally, a lawful off-duty rest period is not provided where an employer fails to relinquish control over how employees spend their time. *Id.* Under Labor Code § 226.7, an employer is required to pay an employee one (1) additional hour of pay at the employee's regular rate of pay for each workday in which a lawful rest period was not provided. *See also* the applicable IWC Wage Order.

Defendants consistently provided employees with rest periods that were less than 10 minutes. Claimant and similarly situated employees of Defendants have and are being denied legally sufficient rest breaks.

Labor Code section 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

8. Defendants failed to reimburse business expenses. (Labor Code § 2802)

Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall

indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

Furthermore, Labor Code section 2802(c) states “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

Defendants required Claimant and other aggrieved employees to purchase safety shoes and overalls for use in the workplace. Claimant and other aggrieved employees were not reimbursed for this necessary expense which was required for the benefit of their employer.

Defendants did and do not compensate Claimant and other aggrieved employees for these costs incurred in the discharge of their duties and they are entitled to recover these expenses. Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

9. Defendants failed to timely pay wages. (Labor Code §§ 204 and 210 and the “Minimum Wages” section of the applicable IWC Wage Order)

Labor Code § 204 subsection (a) states in relevant part “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.”

Labor Code § 204 subsection (b)(1) states: “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.”

The “Minimum Wages” section of the applicable IWC Wage Order provides every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.

Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred dollars (\$200) for each subsequent violation, or willful and intentional violation, plus 25 percent of the amount unlawfully withheld.

Due to Defendants not paying correct legal rates as alleged above, Defendants do not pay all wages. In addition, Defendants fail to pay meal and rest break premiums. Defendants failed to pay Claimant all minimum, regular, overtime, and meal and rest period wages due and owing either on the regular paydays or the payday for the next payroll period. Defendants willfully failed to pay all wages when required by § 204 of the Labor Code. Therefore, Defendants owe penalties to all affected employees including Claimant. Claimant will pursue all remedies for Defendants’ failure to pay timely wages on behalf of himself and other current and former aggrieved employees, including recovery of wages, attorney's fees, costs, and penalties to the extent allowed by law.

10. Defendants failed to provide accurate wage statements and maintain accurate records. (Labor Code §§ 226(a), 226(e)(1), 226.3, 1174, 1174.5, and the “Records” Section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an 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 the last four digits of his or her social security number or an employee identification number other than a social security number; (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.

Labor Code § 226.3 provides that “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

Section (B) of the “Records” provision of the applicable IWC Wage Order states that “Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, 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.”

Labor Code § 1174(d) provides that an employer must 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, employees employed

at the respective establishments. These records shall be kept on file for not less than three years. Labor Code § 1174.5 provides for a civil penalty of five hundred dollars (\$500) for an employer who willfully fails to maintain the records pursuant to Labor Code section 1174(d).

Sections (7)(A)(4) and (5) of the “Records” provision of the applicable IWC Wage Order provides that employers shall keep accurate information with respect to each employee, including total wages paid each payroll period, total hours worked during the payroll period, and applicable rates of pay, as well as time records showing when each employee begins and ends each work period. The time records must also show meal periods, split shift intervals, and total daily hours worked.

Defendants failed to maintain records as set forth in § 1174 of the Labor Code and the “Records” section of the applicable IWC Wage Order including but not limited to, accurately recording applicable rates of pay.

Defendants also failed to provide accurate itemized wage statements as required by Labor Code §226.

Due to Defendants not paying for all hours worked, not paying at legally required rates and not paying meal and rest period premiums, Defendants do not record proper hours and wages, and do not provide legally compliant wage statements accurately accounting for hours, wages, deductions, etc. Nor do the wage statements properly state the name and address of the legal entity that is the employer.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

11. Defendants failed to pay all wages due on termination. (Labor Code §§ 201, 202, 203, 204, 1198, 2699 et seq., and the “Minimum Wages” Section of the applicable IWC Wage Order)

Labor Code § 201 states “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states “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.”

Labor Code § 203(a) states, in relevant part; “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any 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 therefore is commenced; but the wages shall not continue for more than 30 days.”

Labor Code § 204(a) states in pertinent part “All wages... 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 Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred dollars (\$200) for each subsequent violation, plus 25 percent of the amount unlawfully withheld.

The “Minimum Wages” section of the applicable IWC Wage Order provides every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.

Due to Defendants not paying correct legal rates as alleged above, Defendants do not pay all wages. In addition, Defendants fail to pay meal and rest break premiums. Defendants failed to pay Claimant all minimum, regular, overtime, and meal and rest period wages due and owing during and upon termination of employment. Defendants willfully failed to pay all wages when required by §§ 201 and 202 of the Labor Code. Therefore, Defendants owe waiting time penalties to all affected employees including Claimant. Claimant will pursue all remedies for Defendants’ failure to pay timely wages on behalf of himself and other current and former aggrieved employees, including recovery of wages, attorney's fees, costs, and penalties to the extent allowed by law.

12. Defendants failed to comply with the California quota laws. (Labor Code §§ 2101-2104)

Labor Code § 2101 provides that each employer that employs 100 or more employees at a single warehouse distribution center in California, or 1,000 employees at one or more warehouse distribution centers in California, shall provide upon hire or within 30 days of the effective date of this part, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota.

Labor Code § 2102 provides that an employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

Labor Code § 2103 provides:

(a) Any actions taken by an employee to comply with occupational health and safety laws in the Labor Code or division standards shall be considered time on task and productive time for purposes of any quota or monitoring system.

(b) Notwithstanding subdivision (a), consistent with existing law, meal and rest breaks are not considered productive time unless the employee is required to remain on call.

Defendants failed to provide employees with a written description of applicable quotas and any potential adverse employment action that could result from failure to meet the quota. Defendants also required Claimant and other aggrieved employees to meet quotas that prevented compliance with meal and rest periods and use of bathroom facilities, including reasonable travel time to and from bathroom facilities. Defendants took adverse employment actions against Claimant and other aggrieved employees, including termination, for failure to meet a quota that did not allow them to take meal and

rest periods and use the bathroom facilities, including reasonable travel time to and from bathroom facilities, and for failure to meet a quota that had never been disclosed to them as required by Section 2101.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

13. Defendants failed to provide a place of employment that is safe and healthful for the employees therein. (Labor Code §§ 6400, 6402, 6404 and 8 Cal. Code. Regs. § 3364)

Labor Code section 6400 states “(a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.”

Labor Code section 6402 states “No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.”

Labor Code Section 6404 states “No employer shall occupy or maintain any place of employment that is not safe and healthful.”

Labor Code section 2699(f) provides for penalties of \$100 “for each aggrieved employee per pay period for [an] initial violation” and \$200 “for each aggrieved employee per pay period for each subsequent violation.”

Here, Defendants operate using a quota system, which is illegal and can and should be enjoined under Labor Code seq. § 2100. This quota, because it denies proper access to rest breaks and bathroom time, causes employees to have to work at speeds beyond those which are safe and without proper periods of rest, causing unnecessary injuries. Claimant suffered one of those such injuries.

Additionally, California Code of Regulations, Title 8 § 3364 (b) states “Toilet facilities shall be kept clean, maintained in good working order and be accessible to the employees at all times. Where practicable, toilet facilities should be within 200 feet of locations at which workers are regularly employed and should not be more than one floor-to-floor flight of stairs from working areas.”

Defendants failed to provide places of employment that were safe and healthful for the employees therein, in violation of the Cal/OSHA requirements found within Title 8 of the California Code of Regulations and the aforementioned California Labor Code sections, by not providing toilet facilities that are accessible to employees at all times.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. If Claimant becomes aware of additional claims, additional compensation owed or other violations to him or any other current or former employee of Defendants, he reserves the right to revise these facts and/or add any new claims by amending this written notice.

If you have any questions or concerns regarding the above, do not hesitate to contact us.

Sincerely,



Ben Travis
Ben Travis Law, APC



Justin Hewgill
HEWGILL, COBB & LOCKARD, APC

cc (by certified mail):

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