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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

SANTIAGO MERINO MORALES, an individual, on behalf of himself, the State of California, as a private attorney general, and all others similarly situated,

Plaintiff,

v.

DWELLEY FAMILY FARMS, LLC, a California limited liability company; and DOES 1 TO 50,

Defendants.

Case Number: C23-02106

First Amended Class and PAGA Representative Action Complaint For:

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Pay Wages Timely during Employment,
6. Failure to Pay All Wages Earned and Unpaid at Separation,
7. Failure to Furnish Accurate Itemized Wage Statements,
8. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and

9. Civil Penalties Under the Private Attorney General Act (Labor Code § 2699 *et seq.*).

Demand for Jury Trial

Plaintiff Santiago Merino Morales (“Plaintiff”), on behalf of himself, the State of California, as a private attorney general, and all other similarly situated employees within the State of California, complains and alleges of defendants Dwelley Family Farms, LLC and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

I. INTRODUCTION

1. This is a class action complaint brought pursuant to California Code of Civil Procedure section 382.

2. The “Class Period” as used herein, is defined as the period from August 23, 2019 and continuing into the present and ongoing. Defendants’ violations of California’s laws as described more fully below have been ongoing throughout the Class Period and are still ongoing.

3. Plaintiff brings this class action on behalf of himself and the following class: *All individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

4. Plaintiff brings this action on behalf of himself and the Class Members, as a class action, against Defendants for:

- A. Failure to pay all minimum wages,
- B. Failure to pay all overtime wages,
- C. Failure to provide rest periods and pay missed rest period premiums,
- D. Failure to provide meal periods and pay missed meal period premiums,
- E. Failure to pay wages timely during employment,
- F. Failure to pay all wages earned and unpaid at separation,
- G. Failure to furnish accurate itemized wage statements, and
- H. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof. Code, §§ 17200–17210).

1 5. This action is also a representative action brought pursuant to the California Labor Code
2 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
3 through 2699.6.

4 6. The “PAGA Period” as used herein, is defined as the period from August 23, 2022, and
5 continuing into the present and ongoing.

6 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private
7 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
8 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
9 “Aggrieved Employees”).

10 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
11 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders
12 13-2001 and/or 14-2001 (the “Applicable Wage Orders”) and possibly others that may be applicable.
13 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Plaintiff reserves the right to amend or modify the
14 definition of “Applicable Wage Orders” with greater specificity or add additional IWC Wage Orders
15 if additional applicable wage orders are discovered in litigation.

16 **II. JURISDICTION & VENUE**

17 9. This Court has subject matter jurisdiction over all causes of action asserted herein
18 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
19 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
20 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
21 is subject to adjudication in the courts of the State of California.

22 10. This Court has personal jurisdiction over Defendants because Defendants have caused
23 injuries in the County of Contra Costa and the State of California through their acts, and by their
24 violation of the California Labor Code and California state common law. Defendants transact millions
25 of dollars of business within the State of California. Defendants own, maintain offices, transact
26 business, have an agent or agents within the County of Contra Costa, and/or otherwise are found within
27 the County of Contra Costa, and Defendants are within the jurisdiction of this Court for purposes of
28 service of process.

1 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
2 Code of Civil Procedure. Defendants operate within California and do business within Contra Costa
3 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
4 Defendants' employees identified above within Contra Costa County and surrounding counties where
5 Defendants may remotely operate.

6 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
7 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in
8 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
9 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
10 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.
11 (28 U.S.C. § 1332, subd. (d)(4)(A).)

12 **III. THE PARTIES**

13 **A. PLAINTIFF**

14 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
15 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
16 employee in the County of Contra Costa.

17 14. Plaintiff brings this action on behalf of himself and the following class pursuant to
18 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
19 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

20 15. The Class Members, at all times pertinent hereto, are or were employees of Defendants
21 during the relevant statutory period.

22 **B. DEFENDANTS**

23 16. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
24 to and doing business in Contra Costa County and is and/or was the legal employer of Plaintiff, the
25 Class Members, and the Aggrieved Employees during the applicable statutory periods. Plaintiff, the
26 Class Members, and the Aggrieved Employees were, and are, subject to Defendants' policies and/or
27 practices complained of herein and have been deprived of the rights guaranteed to them by: California
28 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1185, 1194, 1194.2,

1 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; California Business and
2 Professions Code sections 17200 through 17210 (“UCL”); and the Applicable Wage Orders (Cal. Code
3 of Regs., tit. 8, §§ 11130, 11140).

4 17. Plaintiff is informed and believes, and based thereon alleges, that during the Class
5 Period, Defendants did (and continue to do) business in the State of California, County of Contra Costa.
6 Defendants operations are headquartered in Contra Costa County.

7 18. Plaintiff does not know the true names or capacities, whether individual, partner, or
8 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
9 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
10 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
11 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
12 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,
13 the Class Members, and the Aggrieved Employees to be subject to the unlawful employment practices,
14 wrongs, injuries, and damages complained of herein.

15 19. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and/or are the employers of Plaintiff, the Class Members, and the Aggrieved
17 Employees. At all times herein mentioned, each of said Defendants participated in the doing of the acts
18 hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each
19 of them, were the agents, servants, and employees of each and every one of the other Defendants, as
20 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
21 and scope of said agency and employment. Defendants, and each of them, approved of, condoned, or
22 otherwise ratified every one of the acts or omissions complained of herein.

23 20. At all relevant times, Defendants, and each of them, were members of and engaged in a
24 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
25 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and
26 believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the
27 Class Members, and the Aggrieved Employees.

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1 **IV. COMMON FACTS & ALLEGATIONS**

2 21. Plaintiff, the Class Members, and the Aggrieved Employees are, and were at all relevant
3 times, employed by the Defendants within the State of California.

4 22. Plaintiff, the Class Members, and the Aggrieved Employees are, and were, at all relevant
5 times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods,
6 and the other claims alleged in this complaint.

7 23. Specifically, Plaintiff was employed by Defendants within the statutory Class Period,
8 working as an hourly, non-exempt picker for Defendants.

9 **A. PIECE-RATE VIOLATIONS**

10 24. California Labor Code § 226.2 governs compensation paid to piece-rate employees, like
11 Plaintiff and the Class Members.

12 25. Under California law, Defendant was and is obligated to Plaintiff, the Class Members,
13 and the Aggrieved Employees, including Plaintiff, separately and hourly for his and their rest break
14 time. *See, Bluford v. Safeway Stores, Inc.*, (Cal. Ct. App. May 8, 2013) 216 Cal. App. 4th 864, 872–
15 73; Labor Code § 226.2. Separate and hourly pay is also required for inspection time, fueling time,
16 waiting time, and time spent on paperwork; *see also Gonzalez v. Downtown LA Motors, LP*, (2013)
17 215 Cal. App. 4th 36, 49 (favorably citing and adopting Cardenas); *Bluford v. Safeway Stores, Inc.*,
18 (Cal. Ct. App. May 8, 2013) 216 Cal. App. 4th 864, 872–73; Labor Code § 226.2. Defendant cannot
19 just pay a piece rate and assume that it covers its employees rest breaks and other nonproductive time.
20 *Id.*; *see also* Labor Code § 226.2 (codifying the listed case law).

21 26. Plaintiff, the Class Members, and the Aggrieved Employees were not paid for non-
22 productive time while employed by the Defendants and working piece-rate shifts. Instead, Plaintiff, the
23 Class Members, and the Aggrieved Employees only received compensation based on the number of
24 green beans picked. Plaintiff, the Class Members, and the Aggrieved Employees did not receive any
25 compensation for non-productive time, including loading the green beans into boxes and loading the
26 boxes into trucks. As a result, Plaintiff, the Class Members, and the Aggrieved Employees were denied
27 compensation for all hours worked, in violation of Cal. Labor Code §1194, and were denied
28 compensation at the minimum wage in violation of Cal. Labor Code §§ 1197.

1 27. Further, Defendants’ failure to provide Plaintiff, the Class Members, and the Aggrieved
2 Employees with accurate wage statements, constitutes a violation of Labor Code §§ 226(a) and 226.2.
3 Specifically, the wage statements did not and do not include total hours worked, do not include all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
5 at each hourly rate in violation of Labor Code Section 226(a) and 226.2, do not include all non-
6 productive time in violation of Labor Code Sections 226(a) and 226.2, and do not include the number
7 of piece rate units earned and the applicable piece rate.

8 **B. MINIMUM WAGE VIOLATIONS**

9 28. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
10 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
11 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
12 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
13 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.
14 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code section 1198 makes unlawful the employment
15 of an employee under conditions that the IWC Wage Orders prohibit.

16 29. These minimum wage standards apply to each hour that employees work. Therefore, an
17 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging
18 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
19 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

20 30. Here, Defendants failed to fully conform their pay practices to the requirements of the
21 law during the relevant statutory periods. Plaintiff, the Class Members, and the Aggrieved Employees
22 were not compensated for all hours worked including, but not limited to, all hours they were subject to
23 the control of Defendants and/or suffered or permitted to work under the California Labor Code and
24 the Applicable Wage Orders. Among other violations, Plaintiff, the Class Members, and the Aggrieved
25 Employees were subject to the control of Defendants while off-the-clock and did not receive minimum
26 wage for each hour worked.

27 31. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
28 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees

1 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
2 due and interest thereon.

3 32. When employees, such as Plaintiff, the Class Members, and the Aggrieved Employees,
4 are not paid for all hours worked under Labor Code section 1194, they are entitled to recover minimum
5 wages for the time which they received no compensation. (See *Sillah v. Command International*
6 *Security Services* (N.D. Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime
7 could recover liquidated damages under Labor Code section 1194.2 if they also showed they were paid
8 less than minimum wage].)

9 33. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
10 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
11 damages, as follows:

12 (1) “For any initial violation that is intentionally committed, one
13 hundred dollars (\$100) for each underpaid employee for each pay period
14 for which the employee is underpaid.”

15 (2) “For each subsequent violation for the same specific offense, two
16 hundred fifty dollars (\$250) for each underpaid employee for each pay
17 period for which the employee is underpaid regardless of whether the
18 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.

19 (a).)

20 34. As set forth above, Defendants failed to fully compensate Plaintiff, the Class Members,
21 and the Aggrieved Employees for all minimum wages. Accordingly, Plaintiff, the Class Members, and
22 the Aggrieved Employees are entitled to recover liquidated damages for violations of Labor Code
23 section 1197.1.

24 35. Based upon these same factual allegations, Plaintiff, the Class Members, and the
25 Aggrieved Employees are likewise entitled to penalties under Labor Code sections 1199.

26 **C. OVERTIME VIOLATIONS**

27 36. Labor Code section 510 requires employers to compensate employees who work more
28 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on

1 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
2 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
3 employees at no less than twice the regular rate of pay when an employee works more than twelve
4 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
5 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

6 37. IWC Wage Order 14-2001, section 3(A), is similar, but provides in pertinent part:

7 “(1) Such employees shall not be employed more than ten (10) hours
8 in any one workday or more than six (6) days in any workweek unless
9 the employee receives one and one-half (1½) times such employee’s
10 regular rate of pay for all hours worked over ten (10) hours in any
11 workday and for the first eight (8) hours on the seventh (7th) day of work
12 and double the employee’s regular rate of pay for all hours worked over
13 eight (8) on the seventh (7th) day of work in the workweek.

14 “(2) For employers of more than 25 employees:

15 “(a) Starting January 1, 2019, an employee shall not be employed
16 more than nine and one-half (9½) hours per workday or fifty-five (55)
17 hours per workweek unless the employee receives one and one-half (1½)
18 times such employee’s regular rate of pay for all hours worked over nine
19 and one-half (9½) hours in any one workday or more than fifty-five (55)
20 hours in any one workweek.

21 “(b) Starting January 1, 2020, an employee shall not be employed
22 more than nine (9) hours per workday or fifty (50) hours per workweek
23 unless the employee receives one and one-half (1½) times such
24 employee’s regular rate of pay for all hours worked over nine (9) hours
25 in any one workday or more than fifty (50) hours in any one workweek.”

26 (Cal. Code of Regs., tit. 8, § 11140, subd. 3.)

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1 38. In accordance with Labor Code section 1194 and the Applicable Wage Orders, Plaintiff,
2 the Class Members, and the Aggrieved Employees could not then agree and cannot now agree to work
3 for a lesser wage than the amount provided by Labor Code sections 510 or the Applicable Wage Orders.

4 39. Here, Defendants violated their duty to accurately and completely compensate Plaintiff,
5 the Class Members, and the Aggrieved Employees for all overtime worked. Plaintiff, the Class
6 Members, and the Aggrieved Employees periodically worked hours that entitled them to overtime
7 compensation under the law but were not fully compensated for those hours.

8 40. Defendants also had a policy and practice of denying Plaintiff, the Class Members, and
9 the Aggrieved Employees meal breaks, but nevertheless deducting meal break time from the Class
10 Members' pay. As a result, Plaintiff, the Class Members, and the Aggrieved Employees' on-the-clock
11 hours were unlawfully reduced below what was actually worked and, by extension, overtime hours
12 were also reduced below what was actually worked. Plaintiff, the Class Members, and the Aggrieved
13 Employees were thus periodically shorted the full amount of overtime pay lawfully owed.

14 41. These actions were and are in clear violation of California's overtime laws as set forth
15 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,
16 §§ 11130, 11140.) As a result of Defendants' faulty policies and practices, the Plaintiff, the Class
17 Members, and the Aggrieved Employees were not compensated for all hours worked or paid accurate
18 overtime compensation.

19 **D. REST BREAK VIOLATIONS**

20 42. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
21 were and are required to provide Plaintiff, the Class Members, and the Aggrieved Employees with
22 compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours
23 worked. Under the Applicable Wage Orders, an employer must authorize and permit all employees to
24 take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code of
25 Regs., tit. 8, §§ 11130, 11140.)

26 43. Likewise, Labor Code section 226.7 provides that "[a]n employer shall not require an
27 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
28 or applicable regulation, standard, or order of the Industrial Welfare Commission" (Lab. Code, §

1 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
2 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
3 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
4 factor in all nondiscretionary payments for work performed by the employee, including non-
5 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
6 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
7 Orders set when and for how long the rest period must take place and the Labor Code establishes that
8 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
9 their employees when employers fail to provide rest periods.

10 44. The California Supreme Court has held that, during required rest periods, “employers
11 must relieve their employees of all duties and relinquish any control over how employees spend their
12 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
13 control over employees during rest periods requires that employees be “free to leave the employer’s
14 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
15 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
16 policy:

17 “An employer is required to authorize and permit the amount of rest break time
18 called for under the wage order for its industry. If it does not—if, for example,
19 it adopts a uniform policy authorizing and permitting only one rest break for
20 employees working a seven-hour shift when two are required—it has violated
21 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
22 Cal.4th 1004, 1033.)

23 45. Here, Defendants periodically did not permit Plaintiff, the Class Members, and the
24 Aggrieved Employees to take compliant duty-free rest breaks, free from Defendants’ control as
25 required by Labor Code section 226.7, the Applicable Wage Orders, and applicable precedent. (See
26 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods
27 employers must relieve employees of all duties and relinquish control over how employees spend their
28 time.”].) At all relevant times, Plaintiff, the Class Members, and the Aggrieved Employees were

1 periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each
2 four hour work period, or major fraction thereof due to Defendants' unlawful rest period
3 policies/practices. Plaintiff, the Class Members, and the Aggrieved Employees were often expected
4 and required to continue working through rest periods to meet the expectations Defendants and finish
5 the workday. In some cases when Plaintiff, the Class Members, and the Aggrieved Employees worked
6 more than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period.
7 As a result, Plaintiff, the Class Members, and the Aggrieved Employees were periodically unable to
8 take compliant rest periods.

9 46. In such cases where Defendants did not offer Plaintiff, the Class Members, and the
10 Aggrieved Employees the opportunity to receive a compliant off-duty rest period, "the court may not
11 conclude employees voluntarily chose to skip those breaks." (*Alberts v. Aurora Behavioral Health*
12 *Care* (2015) 241 Cal.App.4th 388, 410 (2015) ["If an employer fails to provide legally compliant meal
13 or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."]; *Brinker*
14 *Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 ["No issue of waiver ever arises for a rest
15 break that was required by law but never authorized; if a break is not authorized, an employee has no
16 opportunity to decline to take it."].)

17 47. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Class
18 Members, and the Aggrieved Employees were not compensated with one hour's worth of pay at their
19 regular rate of compensation when they were not provided with a compliant rest period in accordance
20 with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section
21 226.7 and the Applicable Wage Orders.

22 48. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
23 exempt employees, rest period premiums and penalties.

24 **E. MEAL BREAK VIOLATIONS**

25 49. Labor Code section 512 and the Applicable Wage Orders require employers to provide
26 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
27 work. (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of
28 more than five hours per day without providing the employee with a meal period of not less than 30

1 minutes”]; Cal. Code of Regs., tit. 8, §§ 11130, 11140 [“No employer shall employ any person
2 for a work period of more than five (5) hours without a meal period of not less than 30 minutes”].)
3 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
4 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
5 employ an employee for a work period of more than 10 hours per day without providing the employee
6 with a second meal period of not less than 30 minutes”].)

7 50. “An on-duty meal period is permitted only when the nature of the work prevents an
8 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
9 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
10 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
11 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
12 have “found that the nature of the work exception applies: (1) where the work has some particular
13 external force that requires the employee to be on duty at all times, and (2) where the employee is the
14 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
15 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
16 to determine whether the nature of the work prevents an employee from being relieved before requiring
17 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
18 p. 946.)

19 51. Here, Plaintiff, the Class Members, and the Aggrieved Employees were never asked to
20 sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of
21 their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*
22 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
23 provide compliant off-duty meal periods within the first five hours of work for Plaintiff, the Class
24 Members, and the Aggrieved Employees.

25 52. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
26 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
27 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
28 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend

1 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
2 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
3 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
4 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
5 *Court*, *supra*, 53 Cal.4th at p. 1033.)

6 53. During the applicable statutory periods here, Plaintiff, the Class Members, and the
7 Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of
8 at least thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of
9 Defendants’ uniform meal period policies and practices, Plaintiff, the Class Members, and the
10 Aggrieved Employees were often not permitted to take compliant first meal periods before the end of
11 the fifth hour of work. Plaintiff, the Class Members, and the Aggrieved Employees were also
12 periodically not permitted to take second meal periods for shifts in excess of ten hours. Defendants thus
13 violated Labor Code section 512 and the Applicable Wage Orders by failing to advise, authorize, or
14 permit Plaintiff, the Class Members, and the Aggrieved Employees to receive thirty-minute, off-duty
15 meal periods within the first five hours of their shifts.

16 54. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
17 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
18 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
19 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate
20 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
21 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
22 Regs., tit. 8, §§ 11130, 11140 [“If an employer fails to provide an employee a meal period in accordance
23 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay
24 at the employee’s regular rate of compensation for each workday that the meal period is not
25 provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for
26 work performed by the employee, including non-discretionary bonuses, commissions, and other forms
27 of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*
28 (2021) 11 Cal.5th 858, 878.)

1 55. Accordingly, for each day that Plaintiff, the Class Members, and the Aggrieved
2 Employees did not receive compliant meal periods, they were and are entitled to receive meal period
3 premiums pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendants,
4 however, failed to pay Plaintiff, the Class Members, and the Aggrieved Employees applicable meal
5 period premiums for many workdays that the employees did not receive a compliant meal period. Thus,
6 Defendants have violated Labor Code section 226.7 and the Applicable Wage Orders.

7 56. Based on the foregoing, Plaintiff seeks to recover, on behalf of himself and other non-
8 exempt employees, meal period premiums and penalties.

9 **F. UNTIMELY WAGES DURING EMPLOYMENT**

10 57. Labor Code section 204 expressly requires employers who pay employees on a weekly,
11 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
12 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
13 Labor Code section 204 subject to a penalty of:

14 “(1) For any initial violation, one hundred dollars (\$100) for each
15 failure to pay each employee.

16 “(2) For each subsequent violation, or any willful or intentional
17 violation, two hundred dollars (\$200) for each failure to pay each
18 employee, plus 25 percent of the amount unlawfully withheld.” (Lab.
19 Code, § 210, subd. (a).)

20 58. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
21 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
22 subd. (a).)

23 59. Due to Defendants’ failure to pay Plaintiff, the Class Members, and the Aggrieved
24 Employees the wages described above, along with rest and meal break premiums, Defendants failed to
25 timely pay Plaintiff, the Class Members, and the Aggrieved Employees within seven calendar days
26 following the close of payroll in accordance with Labor Code section 204 on a regular and consistent
27 basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016
28 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period

1 premiums can support claims under Labor Code sections 203 and 204].)

2 **G. UNTIMELY WAGES AT SEPARATION**

3 60. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
4 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
5 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
6 of Defendants’ failure to pay the Class Members for the wages described above, along with rest and
7 meal break premiums, Defendants violated and continue to violate Labor Code section 203.

8 61. Due to Defendants’ faulty pay policies, those Class Members whose employment with
9 Defendants concluded were not compensated for each and every hour worked at the appropriate rate.
10 Defendants have failed to pay formerly-employed Class Members whose sums were certain at the time
11 of termination within at least seventy-two hours of their resignation and have failed to pay those sums
12 for thirty days thereafter.

13 **H. WAGE STATEMENT VIOLATIONS**

14 62. Defendants also failed to provide accurate itemized wage statements in accordance with
15 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
16 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
17 statement in writing showing:

- 18 (1) The gross wages earned;
- 19 (2) The total hours worked by the employee;
- 20 (3) The number of piece-rate units earned and any applicable piece
21 rate if the employee is paid on a piece rate basis;
- 22 (4) All deductions, provided that all deductions made on written
23 orders of the employee may be aggregated and shown as one item;
- 24 (5) The net wages earned;
- 25 (6) The inclusive dates of the period for which the employee is paid;
- 26 (7) The name of the employee and only the last four digits of his or
27 her social security number or an employee identification number other
28 than a social security number;

1 (8) The name and address of the legal entity that is the employer; and

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

5 63. Due to Defendants' failure to pay Plaintiff, the Class Members, and the Aggrieved
6 Employees properly as described above, the wage statements issued do not indicate the correct amount
7 of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in
8 effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
9 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

10 64. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
11 intentionally failed to provide Plaintiff, the Class Members, and the Aggrieved Employees with
12 accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants
13 knew that they were not providing Plaintiff, the Class Members, and the Aggrieved Employees with
14 wage statements required by California law but nevertheless failed to correct their unlawful practices
15 and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the
16 defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew
17 that it was not providing total hours worked to plaintiff or other employees paid on commission" even
18 though it believed that employees paid solely on commission or commission and salary "are exempt
19 and therefore we do not record hours on a wage statement."].)

20 **V. CLASS ACTION ALLEGATIONS**

21 65. As mentioned above, Plaintiff brings this action on behalf of himself and the Class
22 Members pursuant to section 382 of the Code of Civil Procedure.

23 66. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
24 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
25 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.
26 The identity of such membership is readily ascertainable via inspection of Defendants' employment
27 records.

28 ///

1 **67. Common Questions of Law and Fact Predominate/Well Defined Community of**
2 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
3 non-exempt employees, which predominate over questions affecting only individual members
4 including, without limitation to:

5 A. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
6 Members for all hours worked, including all minimum wages;

7 B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
8 Members for all required overtime wages at the Class Members' regular rate of pay;

9 C. Whether Defendants' rest period policies and practices afforded legally
10 compliant rest periods or compensation in lieu thereof;

11 D. Whether Defendants' meal period policies and practices afforded legally
12 compliant meal periods or compensation in lieu thereof;

13 E. Whether Defendants timely paid all wages during employment;

14 F. Whether Defendants timely paid all wages earned and unpaid at separation;

15 G. Whether Defendants furnished legally-compliant wage statements to the Class
16 Members pursuant to Labor Code section 226; and

17 H. Whether Defendants' violations of the Labor Code and the Applicable Wage
18 Orders amounted to a violation of California's UCL.

19 **68. Predominance of Common Questions:** Common questions of law and fact
20 predominate over questions that affect only individual Class Members. The common questions of law
21 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
22 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
23 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
24 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
25 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,
26 the common questions predominate over individual questions concerning each individual class
27 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

28 ///

1 69. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
2 because Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
4 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
5 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and
6 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was
7 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform
8 meal period policies and practices, was not provided accurate itemized wage statements, was not paid
9 all wages in full and on time, , and was subject to other similar policies and practices to which the Class
10 Members were subject.

11 70. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
12 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
13 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
14 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past
15 and are committed to vigorously prosecuting this action on behalf of the Class Members.

16 71. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
17 important public interest in establishing minimum working conditions and standards in California.
18 These laws and labor standards protect the average working employee from exploitation by employers
19 who have the responsibility to follow the laws and who may seek to take advantage of superior
20 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
21 this action and the format of laws available to Plaintiff and the Class Members make the class action
22 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
23 employee were required to file an individual lawsuit, Defendants would necessarily gain an
24 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
25 each individual plaintiff with their vastly superior financial and legal resources.

26 72. Moreover, requiring each Class Member to pursue an individual remedy would also
27 discourage the assertion of lawful claims by employees who would be disinclined to file an action
28 against their former or current employer for real and justifiable fear of retaliation and permanent

1 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
2 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
3 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
4 which would establish potentially incompatible standards of conduct for Defendants or legal
5 determinations with respect to individual Class Members which would, as a practical matter, be
6 dispositive of the interest of the other Class Members not parties to adjudications or which would
7 substantially impair or impede the ability of the Class Members to protect their interests.

8 73. Further, the claims of the individual Class Members are not sufficiently large to warrant
9 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
10 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
11 Civil Procedure.

12 **VI. CAUSES OF ACTION**

13 **First Cause of Action**

14 *Failure to Pay All Minimum Wages*

15 *(Against All Defendants)*

16 74. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 75. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish the
18 right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab.
19 Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code sections 1194, subdivision (a),
20 and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum wage
21 as required by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees
22 and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest
23 accrued thereon.

24 76. Under California law, Defendant was and is obligated to the Piece-Rate Aggrieved
25 Employees and the Piece Rate Class Members, including Plaintiff, separately and hourly for his and
26 their rest break time. *See, Bluford v. Safeway Stores, Inc.*, (Cal. Ct. App. May 8, 2013) 216 Cal. App.
27 4th 864, 872–73; Labor Code § 226.2. Separate and hourly pay is also required for inspection time,
28 fueling time, waiting time, and time spent on paperwork; *see also Gonzalez v. Downtown LA Motors*,

1 *LP*, (2013) 215 Cal. App. 4th 36, 49 (favorably citing and adopting Cardenas); *Bluford v. Safeway*
2 *Stores, Inc.*, (Cal. Ct. App. May 8, 2013) 216 Cal. App. 4th 864, 872–73; Labor Code § 226.2.
3 Defendant cannot just pay a piece rate and assume that it covers its employees rest breaks and other
4 nonproductive time. *Id.*; see also Labor Code § 226.2 (codifying the listed case law).

5 77. Here, Defendants failed to fully conform their pay practices to the requirements of the
6 law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated
7 for all hours worked including, but not limited to, all hours they were subject to the control of
8 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage
9 Orders.

10 78. Labor Code section 1198 makes unlawful the employment of an employee under
11 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
12 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
13 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
14 in an amount equal to the wages due and interest thereon.

15 79. As a direct and proximate result of Defendants’ unlawful conduct as alleged herein,
16 Plaintiff and the other Class Members have sustained economic damages, including but not limited to
17 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover
18 economic and statutory damages and penalties and other appropriate relief because of Defendants’
19 violations of the Labor Code and Applicable Wage Orders.

20 80. Defendants’ practices and policies regarding illegal employee compensation are
21 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
22 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
23 statutory penalties, attorney’ s fees, and costs of suit according to Labor Code sections 204, 218.5,
24 226.2, 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

25 **Second Cause of Action**

26 *Failure to Pay All Overtime Wages*

27 *(Against All Defendants)*

28 81. Plaintiff realleges and incorporates by reference all previous paragraphs.

82. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed. At all times relevant herein, Defendants were required to properly pay Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section 1194 and the Applicable Wage Orders. Defendants caused Plaintiff and the other Class Members to work overtime hours but did not compensate them at one and one-half times their regular rate of pay for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the other Class Members to work double-time hours but did not compensate them at twice their regular rate of pay for such hours in accordance with California law.

83. Defendants failed to fully conform their pay practices to the requirements of California law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay policies and practices of failing to accurately record all the time that non-exempt employees were under the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow Plaintiff and the other Class Members to recover in a civil action the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

Third Cause of Action

Failure to Provide Rest Periods and Pay Missed Rest Period Premiums

(Against All Defendants)

84. Plaintiff realleges and incorporates by reference all previous paragraphs.

85. Section 12 of the Applicable Wage Orders, and Labor Code section 226.7 establish the right of employees to be provided with a rest period of at least ten minutes for each four hour period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

86. Due to Defendants' unlawful rest period policies and practices described in detail above, Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an

1 additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay
2 for each violation, in accordance with California Labor Code section 226.7.

3 87. The foregoing violations create an entitlement to recovery by Plaintiff and the other
4 Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest
5 thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders, and California
6 Labor Code section 226.7.

7 **Fourth Cause of Action**

8 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

9 *(Against All Defendants)*

10 88. Plaintiff realleges and incorporates by reference all previous paragraphs.

11 89. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their
12 affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other
13 Class Members, with all required meal periods in accordance with the mandates of the Labor Code and
14 the Applicable Wage Orders, for the reasons set forth herein above. Despite Defendants' violations,
15 Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their
16 respective regular rates of pay for each violation, in accordance with California Labor Code section
17 226.7.

18 90. As a result, Defendants are responsible for paying premium compensation for meal
19 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
20 Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
21 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

22 **Fifth Cause of Action**

23 *Failure to Pay Wages Timely during Employment*

24 *(Against All Defendants)*

25 91. Plaintiff realleges and incorporates by reference all previous paragraphs.

26 92. Labor Code section 200 provides that "wages" include all amounts for labor performed
27 by employees of every description, whether the amount is fixed or ascertained by the standard of time,
28 task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all

1 wages earned by any person in any employment are payable twice during the calendar month and must
2 be paid not more than seven days following the close of the period when the wages were earned. Labor
3 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a
4 penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each
5 subsequent violation, plus 25% of the amount unlawfully withheld.

6 93. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards
7 to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to
8 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to
9 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

10 94. Defendants as a matter of established company policy and procedure in the State of
11 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to
12 work without full compensation, to work without legally-compliant off-duty meal periods, to work
13 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other
14 Class Members within seven days of the close of payroll, as required by law.

15 95. Defendants, as a matter of established company policy and procedure in the State of
16 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of
17 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
18 and/or defraud Plaintiff and the other Class Members.

19 96. Defendants' pattern, practice, and uniform administration of its corporate policy of
20 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and
21 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
22 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
23 owed to them pursuant to Labor Code sections 210 and 218.5.

24 **Sixth Cause of Action**

25 *Failure to Pay All Wages Earned and Unpaid at Separation*

26 *(Against All Defendants)*

27 97. Plaintiff realleges and incorporates by reference all previous paragraphs.

28 ///

98. The actionable period for this cause of action is three years prior to the filing of this complaint through the present, and ongoing until the violations are corrected or the class is certified. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due and owing to its former employees (including the formerly-employed Class Members) during the actionable period for this cause of action at or around the time that their employment is or was terminated, or ended.

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

100. Due to Defendants' faulty pay policies, those Class Members whose employment with Defendants has concluded were not compensated for each and every hour worked at the appropriate rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums were certain at the time of termination within seventy-two hours of their resignation and have failed to pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

101. As a result, Defendants are liable to the formerly-employed Class Members for waiting time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties].)

Seventh Cause of Action

Failure to Furnish Accurate Itemized Wage Statements

(Against All Defendants)

102. Plaintiff realleges and incorporates by reference all previous paragraphs.

103. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) The gross wages earned;
- (2) The total hours worked by the employee;

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- (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) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (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.

104. As set forth above, Defendants issued and continues to issue wage statements to its non-exempt employees including Plaintiff and the other Class Members that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as described above, Defendants failed to include required information on their wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision (a).

105. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

106. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and reasonable attorneys' fees.

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1 **Eighth Cause of Action**

2 *Violations of California's Unfair Competition Law*

3 *(Against All Defendants)*

4 107. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 108. Defendants have engaged and continue to engage in unfair and/or unlawful business
6 practices in California in violation of California Business and Professions Code section 17200 through
7 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
8 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
9 compensation to which they are legally entitled. These practices constitute unfair and unlawful
10 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
11 currently employing workers and attempting to do so in honest compliance with applicable wage and
12 hour laws.

13 109. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
14 Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies, as necessary
15 and according to proof, to restore any and all monies withheld, acquired and/or converted by
16 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

17 110. The acts complained of herein occurred within the four years prior to the initiation of
18 this action and are continuing into the present and ongoing.

19 111. Plaintiff was compelled to retain the services of counsel to file this Court action to
20 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
21 of Defendants' current non-exempt employees and to enforce important rights affecting the public
22 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
23 is entitled to recover under Code of Civil Procedure section 1021.5.

24 **Ninth Cause of Action**

25 *Penalties Pursuant to the California Private Attorneys General Act of 2004 ("PAGA") and Other*

26 *Provisions of the California Labor Code*

27 *(Plaintiff and the Aggrieved Employees Against All Defendants)*

28 112. Plaintiff realleges and incorporates by reference all previous paragraphs.

1 113. Based on the above allegations incorporated by reference, Defendants violated
2 California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 256, 510, 512, 1174,
3 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable;
4 California Business and Professions Code sections 17200 through 17210 (“UCL”); and the Applicable
5 Wage Orders (Cal. Code of Regs., tit. 8, §§ 11130, 11140). As a result of the acts alleged above,
6 Plaintiff seeks penalties under California Labor Code §§ 2698–2699.6 because of Defendants’ violation
7 of the California Labor Code and applicable IWC Wage Orders.

8 114. Under California Labor Code §§ 2699(f)(2) and 2699.5, for each such violation,
9 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
10 of trial subject to the following formula:

- 11 A. \$100 for the initial violation per employee per pay period; and
12 B. \$200 for each subsequent violation per employee per pay period.

13 115. These penalties shall be allocated seventy-five percent (75%) to the Labor and
14 Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees.
15 These penalties may be stacked separately for each of Defendants violations of the California Labor
16 Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS
17 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked
18 PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed
19 for the same pay period for different Labor Code violations.”); *See Lopez v. Friant & Assocs., LLC*,
20 No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) (“hold[ing] a plaintiff seeking
21 civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the
22 ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a
23 Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)).

24 116. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
25 aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a).
26 Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code §§ 226(a) and
27 226(e).

28 ///

1 117. For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided by
2 Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a)
3 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
4 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
5 violation in a subsequent citation, for which the employer fails to provide the employee a wage
6 deduction statement or fails to keep the required in subdivision (a) of Section 226.” Accordingly,
7 through PAGA and to the extent permitted by law Plaintiff and the Aggrieved Employees are entitled
8 to recover penalties for violations of Labor Code § 226.3 and seeks default PAGA penalties for each
9 of Defendants’ numerous violations of Labor Code § 226(e).

10 118. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
11 Defendants’ conduct in refusing to provide accurate and itemized wage statements was knowing,
12 intentional, or willful.

13 119. Labor Code § 210 provides that “in addition to, and entirely independent and apart from,
14 any other penalty provided in this article, every person who fails to pay the wages of each employee as
15 provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation,
16 one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation,
17 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
18 employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation
19 policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are
20 entitled to recover penalties under Labor Code § 210 through PAGA.

21 120. Plaintiff has complied with the procedures for bringing suit specified in California Labor
22 Code § 2699.3. and will have fully exhausted his administrative remedies under PAGA prior to
23 proceeding with the PAGA claim. On or about August 23, 2023, Plaintiff filed his PAGA Notice online
24 with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to
25 Defendant setting forth the facts and theories of the violations alleged against Defendant, as prescribed
26 by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the
27 LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was and/or will have
28 been received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65)

1 calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and
2 proceed with a civil action pursuant to Labor Code § 2699.

3 **VII. DEMAND FOR JURY TRIAL**

4 121. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
5 against Defendants.

6 **VIII. PRAYER FOR RELIEF**

7 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought
8 against Defendants, as follows:

- 9 1. For an order certifying the proposed class;
- 10 2. For an order appointing Plaintiff as representative of the class;
- 11 3. For an order appointing Plaintiff's counsel as counsel for the class;
- 12 4. For the failure to pay all minimum wages, compensatory, consequential, general, and
13 special damages according to proof pursuant to Labor Code sections 226.2, 1194,
14 1194.2, 1197, and others as may be applicable;
- 15 5. For the failure to pay all overtime wages, compensatory, consequential, general, and
16 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
17 1198, and others as may be applicable;
- 18 6. For the failure to provide rest periods and pay missed rest period premiums,
19 compensatory, consequential, general, and special damages according to proof pursuant
20 to Labor Code section 226.7;
- 21 7. For the failure to provide meal periods and pay missed meal period premiums,
22 compensatory, consequential, general, and special damages according to proof pursuant
23 to Labor Code sections 226.7 and 512;
- 24 8. For the failure to pay wages timely during employment, the unpaid balance of the
25 compensation owed to Plaintiff and the other Class Members and any applicable
26 penalties owed to them pursuant to Labor Code section 210;
- 27 9. For the failure to pay all wages earned and unpaid at separation, statutory waiting time
28 penalties pursuant to Labor Code sections 201 through 203, for the Class Members who

quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;

10. For the violations of California's Unfair Competition Law, restitution to Plaintiff and the other Class Members of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code sections 17200 through 17210;

11. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the representative action brought on behalf of Plaintiff and the Aggrieved Employees pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor Code section 210;

12. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

13. On all causes of action for which attorneys' fees may be available, for attorneys' fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5, and others as may be applicable;

14. For an order enjoining Defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint; and

15. For such other and further relief, this Court may deem just and proper.

Dated: October 26, 2023

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorney for Plaintiff, the Putative Class, and the
Aggrieved Employees