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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU

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behalf of himself and others similarly situated

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

JERRY D. HAGERTY, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

ROSEBURG FOREST PRODUCTS CO., an
Oregon corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23CV07660

CLASS ACTION Assigned To:
Hon. JoAnn Bicego
Dept.: 2

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Violation of Labor Code § 2802;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint filed: August 3, 2023

BY FAX

1 Plaintiff JERRY D. HAGERTY (hereinafter "Plaintiff"), on behalf of himself and other
2 similarly situated non-exempt, hourly employees employed by Defendants in California
3 (collectively, "Employees"; individually, "Employee"), complains of Defendants, and each of
4 them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time from four years prior to the filing of
8 this lawsuit, are or were employed as non-exempt, hourly employees and laborers and in similar
9 and related wood product manufacturing related positions by Defendants ROSEBURG FOREST
10 PRODUCTS CO., and Oregon corporation, and DOES 1 through 50, inclusive (all defendants
11 being collectively referred to herein as "Defendants"). Plaintiff alleges that Defendants, and each
12 of them, violated various provisions of the California Labor Code, relevant orders of the Industrial
13 Welfare Commission ("IWC"), and the California Business & Professions Code, and seeks redress
14 for these violations.

15 2. Plaintiff and the Class members worked as hourly, non-exempt Employees for
16 Defendants based out of their milling facilities in California, including as laborers and in various
17 milling and wood product production related positions. Plaintiff worked during the relevant period
18 as a laborer and drytender, and there were other similar and related job positions encompassed
19 under the daily shift operations, including feeders, drivers, graders, stacker operators, green chain
20 pullers, clipper operators, saw operators, chart operators, and loader operators. Defendants
21 employed Plaintiff and the Class members based out of their California facilities, including in
22 Weed, California and in Siskiyou County. Plaintiff and the other similarly situated Class members
23 worked at Defendants' behest without being paid all wages due and without being provided all
24 required breaks. More specifically, Plaintiff and the other similarly situated Class members were
25 employed by Defendants and shared similar job duties and responsibilities, were subjected to the
26 same policies and practices, and endured similar violations at the hands of Defendants as the other
27 Employee Class members who served in similar and related positions.

28 3. Defendants required Plaintiff and the Employees in the Class to work off the clock

1 and failed to record accurate time worked by these Employees, failed to pay them at the
2 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
3 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
4 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
5 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
6 under Defendants' control and were otherwise not provided with the opportunity to take full
7 uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the
8 applicable paragraphs of the IWC Wage Orders.

9 4. Defendant ROSEBURG FOREST PRODUCTS CO. is an Oregon corporation with
10 its offices and headquarters located in Springfield, Oregon that maintains offices and milling
11 operations and other wood products manufacturing facilities in California, including in the city of
12 Weed, California in Siskiyou County. ROSEBURG FOREST PRODUCTS CO. operates the mill
13 located there and generally speaking produces veneer, which is then shipped to other plants
14 operated by Defendants for further treatment and processing. It lists its type of business with the
15 California Secretary of State as "Wood Products Manufacturing," and does not list a principal
16 California address. ROSEBURG FOREST PRODUCTS CO. is listed as the employer on W2's
17 and Wage Statements provided to Plaintiff, and upon information and belief the other similarly
18 situated Class members.

19 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
21 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
22 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
23 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
24 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Siskiyou County
25 and in the mill and related facilities Defendants maintain there.

26 6. The true names and capacities, whether individual, corporate, associate, or
27 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
28 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of

1 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
2 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
3 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
4 this Complaint to reflect the true names and capacities of the Defendants designated herein as
5 Does 1 through 50 when their identities become known.

6 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
7 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
8 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
9 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
10 all respects as the employers or joint employers of Employees. Defendants, and each of them,
11 exercised control over the wages, hours or working conditions of Employees, created and
12 implemented the policies and practices that governed the employment of Plaintiff and the Class
13 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
14 Plaintiff and the other Employee Class members to work, or engaged them, thereby creating a
15 common law employment relationship with the Employee Class members. Therefore, Defendants,
16 and each of them, employed or jointly employed the Employee Class members.

17 **FACTUAL BACKGROUND**

18 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
19 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission
20 ("IWC"). During the period of four years prior to the filing of this action through its resolution,
21 the Employee Class members were employed by Defendants and worked in non-exempt positions
22 at the direction of Defendants in the State of California. Plaintiff and the Class members were
23 either not paid by Defendants for all hours worked or were not paid at the appropriate minimum,
24 regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the
25 Class members all wages due and owing, including by requiring off the clock work, failed to
26 provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of
27 various provisions of the California Labor Code and applicable paragraphs of IWC Wage Orders.

28 9. Plaintiff served in hourly positions including laborer and drytender, who along

1 with his co-workers kept the mill operations running and the machinery fed through equipment
2 operation and material selection and machinery maintenance. During the course of Plaintiff and
3 the Class members' employment with Defendants, they were not paid all wages they were owed,
4 including for all work performed (resulting in "off the clock" work) and for all their overtime
5 hours worked. This has resulted in systematic and ongoing violations of the California Labor
6 Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other
7 non-exempt, hourly laborers in similar wood products production related positions based out of
8 Defendants' facilities in California.

9 10. Timekeeping entries were recorded by Plaintiffs and the Class members in
10 Defendants timekeeping system by inputting an Employee ID into a time clock. Defendants in
11 some instances required only that shift start time and shift end time entries be maintained and
12 often violated the Labor Code records keeping requirements by not recording meal period start
13 and end times in many instances, or else recording them incorrectly. Plaintiff would also notice
14 that wage statements listed hours that were dramatically rounded down. Managers would
15 systematically round down hours and time shave timekeeping entries in an effort to show facial
16 compliance and minimize overtime hours, and to conform records to reflect scheduled hours
17 rather than actual hours worked. In fact, Plaintiff understood that he was only supposed to receive
18 overtime if he worked more than 40 hours in a week, and Defendants would manipulate
19 scheduling and timekeeping entries to not exceed eight or ten hours on a work shift in an effort to
20 avoid paying overtime to Employees. Plaintiff thus incurred overtime on most of his work shifts,
21 but Defendants failed to pay for those hours at the applicable premium rate.

22 11. Plaintiff was scheduled to work an alternative work week schedule generally of
23 four days per week and 10 hours per work shift. Plaintiff was scheduled during the evenings on
24 some occasions, and on the day shift for others. In practice, shifts were dramatically longer than
25 10 hours if all hours worked were recorded and paid by Defendants, and generally lasted for 12
26 hours or more with all the off the clock work. To make matters worse, Defendants' managers
27 would instruct Plaintiff and other Employees to enter times that conformed to generally scheduled
28 shift times rather than actual hours worked, or Defendants' managers would alter time keeping

1 records to reflect fewer hours than were actually worked. The same unlawful practices occurred
2 through the manipulation of meal period start and end times to reflect timely and uninterrupted
3 30-minute meal periods when in reality they were untimely and/or neither duty free nor for 30
4 minutes. Defendants' managers would also compel and instruct Plaintiff to clock out in the
5 timekeeping system for a meal period at a time and for a duration that appeared timely and
6 compliant while he again returned to work off the clock.

7 12. Plaintiff, and upon information and belief the other class members, were required
8 to arrive at Defendants' facilities before their scheduled start times in order to be prepared to
9 begin work at their scheduled time. They were required to prepare for their shift by donning
10 safety glasses and hard hats and ear plugs and gloves and the like before they were clocked in.
11 With the size of the mill and only four time clocks situated throughout it, Employee had to walk
12 generally at least 3-5 minutes within the mill facilities to get to their time clocks and clock in by
13 the scheduled start time. Therefore, Defendants managers instructed Plaintiff and Employees to
14 arrive at work 10-12 minutes before their shift start time to ensure they were dressed in required
15 safety equipment and had time to walk to their assigned workstations and clock in near the
16 scheduled shift start time. This would also ensure seamless transition from earlier shifts and that
17 the mill and its equipment were running efficiently, and would permit any shift transitions and
18 meetings to run smoothly and on time.

19 13. Further off the clock work occurred after work shifts had ended, including
20 receiving calls and messages and responding to work related matters. Plaintiff was also required
21 to complete shift related paperwork or reports after he had clocked out for the day. Additionally,
22 when work shifts extended past the scheduled end time, Defendants' managers would remove the
23 excess minutes from the timekeeping records. This led to systematic and significant time shaving
24 and rounding violations, along with failure to pay overtime.

25 14. In view of the above described systematic off the clock work, in substantial
26 proportion before his scheduled shift start time, Plaintiff began incurring work hours well before
27 he was credited for them and began incurring overtime hours earlier than the recorded time for
28 eight or ten hours in his shift. Additionally, Plaintiff began incurring overtime hours worked

beyond forty hours in a work week well before he was credited for doing so, thus resulting in further underpayment of overtime premium wages. Defendants never counted the substantial hours worked before and after work shifts for regular rate or overtime premium rate payments. Additionally, Plaintiff and the other Class members rotated between working day and night shifts throughout a work week, and Defendants paid them a shift differential to work those night shifts. However, in the event Defendants ever paid Plaintiff overtime, they underpaid it by failing to include such differentials in the regular hourly rate used to calculate and pay that overtime.

15. Plaintiff was therefore not paid for all his hours worked at the required minimum, overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy and practice of requiring him to work off the clock and without pay. Defendants systematically underpaid Plaintiff and the Class members by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the required double time rate. Upon information and belief, the Class members were bound by similar scheduling and timekeeping policies and endured similar violations at Defendants' hands as Plaintiff.

16. Defendants have either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off the clock work Defendants required and the actual hours Plaintiff worked or the breaks he received or have otherwise declined to produce them to Plaintiff in response to a timely and lawful records request. By failing to pay for all hours worked, and by under-recording regular hours to the detriment of the Class members, Defendants have committed knowing and intentional ongoing violations of the record keeping requirements under the Labor Code, including section 1174, by either failing to maintain records or retaining inaccurate ones.

17. The failure to pay for all hours worked and underpayment of wages to Plaintiff and the Class members is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which upon information and belief applied uniformly to the Class members working at Defendants' facilities throughout California. As a result of the above-described unlawful requirements to work off the clock, the failure to accurately record all hours

1 worked and pay wages at the correct rates, and the other wage violations they endured at
2 Defendants' hands, Plaintiff and the Class members were not properly paid all wages earned and
3 all wages owed to them by Defendants, including when working more than eight hours in any
4 given day and/or more than forty hours in any given week.

5 18. Therefore, from at least four years prior to the filing of this lawsuit and continuing
6 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
7 hours worked and failing to pay minimum wages for all time worked, as required by California
8 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
9 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
10 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
11 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
12 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

13 19. Defendants also failed to provide Plaintiff and the Class members with their
14 required meal periods and the at least two or three ten-minute rest breaks required for scheduled
15 shifts duration. The above described off the clock work contributed to Defendants' common policy
16 of failing to provide lawful meal periods to Plaintiff and the Class members, as required under the
17 Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly failed to authorize
18 and permit Plaintiff and the employee Class Members to take all required 10-minute rest breaks, as
19 required under the Labor Code and Paragraph 12 of the IWC Wage Order(s). Defendants failed to
20 pay meal period or rest break premiums for all meal periods they unlawfully provided or failed to
21 provide, or else failed to include all forms of remuneration received during the pay period in any
22 regular rate calculation used to calculate and pay meal period premiums.

23 20. Plaintiff and the Class members endured systematic and ongoing meal period
24 violations under Defendants' policy and practice or either not providing meal periods or providing
25 them untimely and for shortened durations. The management pressure to maintain production at
26 the mill and keep the machines running and producing compelled Plaintiff and the Class members
27 to work through breaks and not take them or to take them late in their work shifts or perform job
28 duties during breaks. Working through breaks was an expected part of the job and Plaintiff was

1 even instructed to record that he had taken a timely and complete 30 minute off duty meal period
2 without interruption but to go back to his work station to continue work. Defendants also either
3 failed to maintain records of when Plaintiff and other Class members began and ended meal
4 periods, or else recorded them inaccurately. Additionally, with the consistent ten hour work days
5 scheduled and all the off the clock work addressed above, work shifts consistently extended well
6 past 10 hours, which required Defendants to provide two meal periods. Defendants often failed to
7 do so, or again would adjust timekeeping records or instruct Plaintiff to record hours to round
8 down and shave hours worked to less than 10 hours. Additionally, given the production demands
9 and the on-duty nature of the majority of the meal periods provided to Plaintiff, he was not
10 permitted to leave the premises during meal periods or was otherwise required to remain under
11 Defendants' control during meal periods to respond to communications from managers and other
12 work demands. He was expected to not leave the floor unattended and to take any breaks in the
13 vicinity of his work area. Upon information and belief, Defendants failed to pay meal period
14 premiums under Labor Code § 226.7 for these ongoing violations. To the extent Defendants paid
15 any such premiums, they underpaid them upon information and belief by failing to include all
16 forms of remuneration such as bonuses and shift differentials in the regular rate used to calculate
17 and pay the penalty premium.

18 21. Defendants thus failed to provide all the legally required unpaid, off-duty meal
19 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
20 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
21 members were required to perform work as ordered by Defendants for more than five hours during
22 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
23 followed a practice of requiring off the clock work in a manner that would impact when
24 Employees were to receive meal periods and rest breaks, thus leading to further violations.

25 22. Upon information and belief, Defendants' systems did not automatically generate a
26 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
27 into a work shift or in the event the time punch records reflected a meal period of less than 30
28 minutes or a missed meal. However, upon information and belief, in the event Defendants did pay

1 any meal period premiums, they did so at the employee's customary regular rate of hourly
2 compensation without including all forms of remuneration in that hourly rate calculation, for
3 example by omitting bonuses or shift differentials and the like from the rate at which meal
4 premiums were paid.

5 23. Defendants thus followed uniformly applied policies of not providing all required
6 meal periods to their Employees. Meal periods were often not properly provided, as work
7 demands impermissibly shortened their breaks or rendered them untimely. Even when Plaintiff
8 and the Class members were able to take a meal period, it was often provided for less than the
9 required 30 minutes or was otherwise interrupted by work duties or was taken after the fifth hour
10 of work. Additionally, as addressed above, Defendants followed a practice of requiring off the
11 clock work in a manner that would impact when Employees were to receive meal periods and rest
12 breaks, thus leading to further violations.

13 24. As a result, Defendants' failure to provide Plaintiff and the Class members with all
14 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
15 periods is and will be evidenced by Defendants' business records, or lack thereof. As further
16 detailed above, Defendants also failed to pay Employees "premium pay," i.e., one hour of wages
17 at each Employee's effective regular hourly rate of compensation for each meal period or rest
18 break that Defendants failed to provide or deficiently provided.

19 25. Therefore, for at least four years prior to the filing of this action and through to the
20 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
21 provided with the opportunity to take required breaks as required under the Labor Code and Wage
22 Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Class
23 members were provided with a meal period, it was often untimely or interrupted, or was
24 impermissibly shortened, and Employees were not provided with one hour's wages at their regular
25 rate in lieu thereof. Meal period violations thus occurred in one or more of the following manners:

- 26 (a) Class members were not provided full thirty-minute duty free meal periods
27 for work days in excess of five hours and were not compensated one hour's
28 wages in lieu thereof, or were not compensated at the correct regular rate

of compensation, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);

(b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten hours;

(c) Class members were required to work through at least part of their daily meal period(s);

(d) Meal periods were provided after five hours of continuous work during a shift; and

(e) Class members were restricted in their ability to take a full thirty-minute meal period or to leave Defendants' premises.

26. Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members were either not authorized permitted the opportunity to take a rest break, or were required to remain under Defendants' control and respond to instructions and job demands. Upon information and belief, Defendants thus also failed to authorize and permit employees to leave the premises during rest breaks or were required to remain under Defendants' control and respond to radio and other communications, evidencing Defendants' policy and practice of requiring Plaintiff and the Class members to remain under their control during required off-duty rest break times. Defendants' uniformly applied policies and practices thus resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted.

27. During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Class members were and are under Defendants' control when they are working through rest breaks. Defendants have also provided either impermissibly shortened or untimely rest breaks to Plaintiff and the Class members. Plaintiff and the Employees in the Class were thus not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one hour's wages in lieu thereof. They were required to remain on duty

1 during breaks or portions of their breaks, thus making them either untimely or shortened and on-
2 duty, and they were also prevented from leaving the premises during rest breaks under
3 Defendants' policies and practices. Rest period violations therefore arose in one or more of the
4 following manners:

- 5 (a) Class members were required to work without being provided a minimum
6 ten minute rest period for every four hours or major fraction thereof worked
7 and were not compensated one hour of pay at their regular rate of
8 compensation for each workday that a rest period was not provided;
- 9 (b) Class members were not authorized and permitted to take timely rest periods
10 for every four hours worked, or major fraction thereof; and
- 11 (c) Class members were required to remain on duty during rest periods or
12 otherwise had their rest periods interrupted by work demands.

13 28. From at least four years prior to the filing of this lawsuit and continuing to the
14 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
15 deducting the Employees' earned wages, including by the above described off the clock work and
16 on-duty work while on unpaid meal breaks. By not compensating Employees for all hours worked,
17 Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

18 29. Defendants also violated California Labor Code § 246 by not providing all
19 required paid sick days to Plaintiff and the aggrieved employees. Labor Code § 246 provides that
20 an Employee who "works in California for the same employer for 30 or more days within a year
21 from the commencement of employment is entitled to paid sick days as specified in this section."
22 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
23 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
24 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
25 the Class members during the relevant time period, including by failing to provide two work
26 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
27 248.2 and including damages and penalties as these sections are enforced through Labor Code §
28 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid

1 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
2 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
3 (\$4,000), shall be included in the administrative penalty.” Plaintiff accordingly seeks this relief
4 available for Defendants’ failure to provide Employees with all their required and earned sick
5 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,
6 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
7 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees
8 and costs pursuant to Labor Code § 2699(g)(1).

9 30. As a result of these illegal policies and practices, Defendants also engaged in and
10 enforced the following additional unlawful practices and policies against Plaintiff and the Class
11 members he seeks to represent:

- 12 a. failing to pay all wages owed to Class members who either were discharged, laid
13 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
14 203;
- 15 b. failing to pay all wages owed to the Class members twice monthly in accordance
16 with the requirements of Labor Code § 204;
- 17 c. failing to pay Class members all wages owed, including all meal and rest period
18 premium wages, and failing to pay them at the regular rate of compensation;
- 19 d. failing to maintain accurate records of Class members’ hours worked and earned
20 wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section
21 7 of the applicable IWC Wage Orders; and
- 22 e. failing to produce timekeeping records in response to Plaintiff’s timely and lawful
23 request to receive them under these authorities.

24 31. Defendants have also consistently failed to provide Class members with timely,
25 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
26 including by the above-described requirement of off the clock work, failure to pay all overtime
27 and double time wages owed, and failure to pay premium wages for unprovided or otherwise
28 unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break

1 premium wages. Defendants have also made it difficult to account with precision for the
2 unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Class,
3 during the liability period, including to the extent they did not calculate the regular rate of pay
4 correctly when paying overtime or meal period premiums and because they did not implement and
5 preserve a record-keeping method as required for non-exempt employees by California Labor
6 Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon
7 information and belief, time clock punches were not maintained or were not accurately maintained
8 for work shifts and meal periods, which were automatically presumed by Defendants to have been
9 lawfully provided when they were not. Defendants also failed to accurately record and pay for all
10 regular and overtime hours worked and submitted by Plaintiff and the Class members, including
11 by failing to pay all overtime hours at the correctly calculated overtime premium rate.

12 32. Defendants have thus also failed to comply with Labor Code § 226(a) by
13 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
14 members, along with the appropriate applicable rates, among others requirements. Plaintiff and
15 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
16 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
17 applicable California IWC Wage Orders by failing to maintain time records showing when the
18 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
19 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
20 payment of wages and accurately reporting total hours worked.

21 33. Defendants also required Plaintiff and the Class members to work hours off the
22 clock for which they were not compensated. They were also required to endure off the clock work
23 and systematic rounding and failure to pay all wages as addressed above and during interrupted or
24 otherwise on-duty meal and rest periods and were not provided with sick pay and supplemental
25 sick leave. Defendants also failed to pay all overtime premium wages owed for work conducted on
26 a work shift and a workday, as addressed above. Therefore, Defendants have also followed a
27 uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly
28 situated Employees at the time of their termination or within seventy-two hours of their

1 resignation, as required by California wage-and-hour laws.

2 34. Additionally, from at least four years prior to the filing of this lawsuit and
3 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
4 incur necessary business expenses in the course of performing their required job duties without
5 reimbursement. Defendants required Plaintiff to use his personal cellular phone to respond to and
6 communicate with Defendants and their managers regarding work matters and scheduling,
7 including while on duty or during breaks or when they were off-duty and not otherwise working.
8 Plaintiff asserts these calls and activities conducted through his cell phone were necessary and
9 required work-related communications.

10 35. Upon information and belief, the other Class members incurred similar expenses
11 for performing necessary work-related communications, for which they were also not reimbursed
12 by Defendant. Plaintiff and the Class members must be reimbursed for these necessary business
13 expenses under Labor Code § 2802 and Defendants systematically failed to do so. Defendants
14 uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred
15 in direct discharge of their job duties during employment with Defendants and at the direction of
16 the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders,
17 paragraph 9.

18 36. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
19 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 246,
20 248.1, 248.5, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, and 2698 *et seq.*, and
21 California Code of Regulations, Title 8, section 11000 *et seq.*

22 37. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
23 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
24 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
25 fraudulent practices alleged in this Complaint.

26 **CLASS ALLEGATIONS**

27 38. Plaintiff brings this class action on behalf of himself and all others similarly
28 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the

Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employee laborers within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants’ policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

h. Subclass 8. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants’ policy and/or practice of failing to timely pay wages upon

1 termination.

2 i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred
3 necessary and reasonable expenses in connection with performing their job duties for Defendants
4 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

5 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
6 result of Defendants' business acts and practices, to the extent such acts and practices are found to
7 be unlawful, deceptive, and/or unfair.

8 39. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
9 modify the class description with greater particularity or to provide further division into subclasses
10 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
11 against Defendants, the Class Period should be adjusted accordingly.

12 40. Defendants, as a matter of company policy, practice and procedure, and in violation
13 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
14 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
15 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
16 worked by the Plaintiff and the other members of the Class, even though Defendants enjoyed the
17 benefit of this work, required Employees to perform this work and permitted or suffered to permit
18 this work. Defendants have uniformly denied these Class members wages to which these
19 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
20 order to unfairly cheat the competition and unlawfully profit.

21 41. This action has been brought and may properly be maintained as a class action
22 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
23 of interest in this litigation and the proposed Class is easily ascertainable from the employment
24 records for Plaintiff and the Class members that Defendants are required to maintain under
25 California law.

26 **A. Numerosity**

27 42. The potential members of the class as defined are so numerous that joinder of all
28 the member of the class is impracticable. While the precise number of class member has not been

determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the Class definition within the State of California. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class members.

B. Commonality

43. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. The common questions are numerous and substantial and flow from Defendants' uniform policies and/or practices of violating the California Labor Code addressed above. As such, these common questions predominate over individual questions concerning each individual Class Member's showing as to his or her eligibility for recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay

wages and compensation due and owing at the time of termination of employment;

j. Whether Defendants' conduct was willful;

k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;

l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;

m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;

n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;

o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

44. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was required to endure are typical of those of the other Class members.

D. Adequacy of Representation

45. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

46. A class action is superior to other available means for the fair and efficient

1 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
2 questions of law and fact common to all Employees predominate over any questions affecting only
3 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
4 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

5 47. As to the issues raised in this case, a class action is superior to all other methods for
6 the fair and efficient adjudication of this controversy, as joinder of all Class members is
7 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
8 members. Further, as the economic or other loss suffered by vast numbers of Class members may
9 be relatively small, the expense and burden of individual actions makes it difficult for the Class
10 members to individually redress the wrongs they have suffered. Moreover, in the event
11 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
12 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
13 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
14 to vindicate their rights for violations they endured which they would otherwise be foreclosed
15 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

16 48. Class action treatment will allow those persons similarly situated to litigate their
17 claims in the manner that is most efficient and economical for the parties and the judicial system.
18 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
19 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
20 set forth the subject and nature of the instant action. The Defendants' own business records can be
21 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
22 that any further notice is required additional media and/or mailings can be used.

23 49. Defendants, as prospective and actual employers of the Employees in the Class,
24 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
25 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
26 Employees as well as the effect of any alleged arbitration agreements that may have been forced
27 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
28 and policies, most notably intentionally refusing to pay for all hours actually worked which should

1 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
2 agreements and policies and practices on the Employees and Class as a whole.

3 50. Plaintiff and the Employees in the Class did not discover the fact that they were
4 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
5 ever any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by
6 jury, right to collectively organize and oppose unlawful pay practices under California law as well
7 as obtain injunctive relief preventing such practices from continuing. As a result, the applicable
8 statutes of limitation were tolled until such time as Plaintiff and the Class members discovered
9 their claims.

10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PAY MINIMUM WAGES**
12 **(Against All Defendants)**

13 51. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 52. Defendants failed to pay Employees minimum wages for all hours worked.
16 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
17 would work hours and not receive wages, including as alleged above in connection with off the
18 clock work and rounding and time shaving, and including all the time required to remain on duty
19 and under Defendants' control during breaks and due to the work demands placed upon them by
20 Defendants' management and customers. Defendants' uniformly applied policies required
21 systematic off the clock work and underpayment of all wages owed to Employees over a period
22 of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly
23 failed to pay minimum wages to Plaintiff and the Class members, including by requiring
24 systematic off the clock work. To the extent any local wage ordinances were also applicable to
25 paying the employees an hourly rate above the minimum wage rate, Defendants failed to comply
26 with the local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices
27 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
28 uniform policy and practice that denied accurate compensation to Plaintiff and the other members

1 of the Class as to minimum wage pay.

2 53. In California, employees must be paid at least the then applicable state minimum
3 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
4 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Additionally,
5 pursuant to California Labor Code § 204, other applicable laws and regulations, and public
6 policy, an employer must timely pay its employees for all hours worked. Defendants failed to do
7 so.

8 54. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
9 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
10 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
11 applicable minimum wage rate fixed by the commission for work during the relevant period is
12 found in the Wage Orders.

13 55. The minimum wage provisions of California Labor Code are enforceable by private
14 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
15 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
16 overtime compensation applicable to the employee is entitled to recover in a civil action the
17 unpaid balance of the full amount of this minimum wage or overtime compensation, including
18 interest thereon, reasonable attorney’s fees and costs of suit.”

19 56. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
20 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
21 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
22 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
23 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
24 the absence of a contractually agreed upon one.

25 57. In committing these violations of the California Labor Code, Defendants
26 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
27 reflect their actual hours worked, or miscalculate hours or rates or otherwise underpaid the actual
28 time worked by Plaintiff and other members of the Class, including by requiring off the clock

1 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
2 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
3 Welfare Commission requirements and other applicable laws and regulations. As a result of these
4 violations, Defendants also failed to timely pay all wages earned in accordance with California
5 Labor Code § 1194.

6 58. California Labor Code § 1194.2 also provides for the following remedies: “In any
7 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
8 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
9 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

10 59. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
11 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
12 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
13 pay each employee minimum wages.

14 60. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
15 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
16 interest thereon.

17 61. Defendants have the ability to pay minimum wages for all time worked and have
18 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
19 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

20 62. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
21 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
22 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
23 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
24 members of the Class further request recovery of all unpaid wages, according to proof, interest,
25 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
26 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
27 wage compensation is determined to be owed to the Class members who have terminated their
28 employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore

1 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
2 which penalties are sought herein on behalf of these Class members. Defendants' failure to timely
3 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
4 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
5 alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class
6 members are entitled to seek and recover statutory costs.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

9 **(Against All Defendants)**

10 63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 64. California Labor Code § 1194 provides that "any employee receiving less than the
13 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
14 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
15 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
16 may be maintained directly against the employer in an employee's name without first filing a
17 claim with the Division of Labor Standards and Enforcement.

18 65. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
19 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
20 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
21 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
22 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
23 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
24 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
25 work in a workweek.

26 66. Defendants had a consistent policy of not paying Employees wages for all hours
27 worked, including by rounding and requiring off the clock work as addressed above, by under-
28 reporting actual hours worked, and by requiring Employees to do so as well. Defendants have also

1 failed to include all forms of remuneration in the regular rate of pay used to calculate and pay
2 overtime, and failed to begin paying overtime when it was incurred due to the off the clock work,
3 as detailed above.

4 67. Defendants thus had a consistent policy of not paying Employees wages for all
5 hours worked, including hours at their required regular, overtime, and double-time rates.
6 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
7 and/or modified certain employees' hours, including Plaintiff's, or otherwise caused them to work
8 off the clock to avoid paying Plaintiff and the Class members all earned and owed straight time
9 and overtime wages and other benefits, in violation of the California Labor Code, the California
10 Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
11 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff
12 and other similarly situated non-exempt employees to work through meal periods or remain under
13 Defendants' control when they were required to be clocked out or to otherwise work off the clock
14 to complete their daily job duties and respond to demands from customers and managers.

15 68. Therefore, Employees were not properly compensated, nor were they paid overtime
16 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
17 Based on information and belief, Defendants did not make available to Employees a reasonable
18 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
19 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
20 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
21 Class members to work through meal periods when they were required to be clocked out or to
22 otherwise work off the clock to complete their daily job duties.

23 69. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
24 regular wages owed and overtime compensation for all hours worked, as required by California
25 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
26 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
27 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

28 70. Additionally, Labor Code § 558(a) provides "any employer or other person acting

1 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
2 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
3 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
4 pay period for which the employee was underpaid in addition to an amount sufficient to recover
5 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
6 underpaid employee for each pay period for which the employee was underpaid in addition to an
7 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
8 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
9 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
10 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
11 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
12 Code § 558.

13 71. Defendants’ failure to pay compensation in a timely fashion also constituted a
14 violation of California Labor Code § 204, which requires that all wages shall be paid
15 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
16 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
17 and overtime compensation earned by Employees. Each such failure to make a timely payment of
18 compensation to Employees constitutes a separate violation of California Labor Code § 204.

19 72. Employees have been damaged by these violations of California Labor Code §§
20 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
21 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
22 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
23 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
24 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
25 any order or ruling of the commission.”

26 73. Consequently, pursuant to the California Labor Code, including Labor Code §§
27 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
28 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of

1 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
2 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
3 against Defendants, and each of them, and any additional sums as provided by the Labor Code
4 and/or other statutes.

5 **THIRD CAUSE OF ACTION**

6 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

7 **(Against All Defendants)**

8 74. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 75. Employees regularly worked shifts greater than five hours and in some instances,
11 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
12 Wage Order, an employer may not employ someone for a shift of more than five hours without
13 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
14 ten hours without providing him or her with a second meal period of not less than thirty (30)
15 minutes.

16 76. Defendants failed to provide Employees with meal periods as required under the
17 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
18 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
19 provided them after Employees worked beyond the fifth hour of their shifts or Employees
20 otherwise had them shortened and interrupted by work demands and requirements to perform off
21 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
22 on the occasions when Employees worked more than ten hours in a given shift, they did so
23 without receiving a second uninterrupted thirty-minute meal period as required by law.

24 77. Defendants thus failed to provide Plaintiff and the Class members with meal
25 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
26 including by not providing them with the opportunity to take meal breaks, by providing them late
27 or for less than thirty minutes, or by requiring them to perform work during breaks.

28 78. Moreover, Defendants failed to compensate Employees for each meal period not

1 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
2 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
3 employee a meal period in accordance with this section, the employer shall pay the employee one
4 hour of pay at the employee's regular rate of compensation for each workday that the meal period
5 is not provided. As detailed above, on the occasions when Defendants did pay any meal period
6 premiums, they upon information and belief underpaid them by miscalculating the regular rate of
7 compensation by not including all forms of remuneration in it. Defendants thus failed to
8 compensate the Employees in the Class for each meal period not provided or inadequately
9 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
10 Wage Order.

11 79. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
12 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
13 to one hour of wages at their effective hourly rates of pay for each meal period not provided or
14 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
15 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
16 other statutes and applicable IWC Wage Order paragraphs.

17 **FOURTH CAUSE OF ACTION**

18 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

19 **(Against All Defendants)**

20 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
21 full herein.

22 81. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
23 provide that employers must authorize and permit all employees to take rest periods at the rate of
24 ten minutes net rest time per four work hours.

25 82. Employees consistently worked consecutive four hour shifts and were generally
26 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
27 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
28 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for

1 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
2 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often
3 required to work or to otherwise remain under Defendants' control during rest periods, including
4 by responding to work requirements, and had breaks provided untimely as a result of the above
5 described off the clock work. Plaintiff and the Class members were also not permitted to leave
6 their work premises during rest breaks.

7 83. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
8 Orders provide that if an employer fails to provide an employee rest period in accordance with this
9 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
10 compensation (as further detailed above regarding meal periods) for each workday that the rest
11 period is not provided. Defendants failed to do so.

12 84. Defendants, and each of them, have therefore intentionally and improperly denied
13 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
14 paragraph 12 of the applicable IWC Wage Orders.

15 85. Defendants failed to authorize and permit Plaintiff and the Class members to take
16 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
17 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
18 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
19 12 and 20 of the applicable IWC Wage Orders.

20 86. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
21 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
22 hour of wages at their effective hourly rates of pay for each day worked without the required rest
23 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
24 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

87. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

88. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

89. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to Employees by Defendants failed to accurately account for wages, overtime, and premium pay, including for all overtime and double time hours worked and for deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

90. As detailed above, Defendants intentionally failed throughout the liability period to furnish to Plaintiff and the Class members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) 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

1 employee pursuant to Labor Code § 226 and paragraph 7 of the applicable IWC Wage Orders,
2 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide
3 Plaintiff and the Class members with such timely and accurate wage and hour statements, and
4 omitted required information that Plaintiff and the Class members could not resolve by reference
5 to the alleged wage statement alone.

6 91. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
7 and intentional failure to provide them with the wage and hour statements as required by law and
8 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
9 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
10 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
11 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
12 wage statement alone one or more of the following: (i) The amount of the gross wages or net
13 wages paid to the employee during the pay period or any of the other information required to be
14 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
15 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
16 wages paid to the employee during the pay period, (iii) The name and address of the employer
17 and, (iv) The name of the employee and only the last four digits of his or her social security
18 number or an employee identification number other than a social security number. For purposes
19 of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an
20 objective standard] would be able to readily ascertain the information without reference to other
21 documents or information.

22 92. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
23 are required "to pay each employee, on the established payday for the period involved, not less
24 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
25 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
26 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
27 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
28 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable

1 IWC Wage Orders.

2 93. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
3 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
4 Class suffered injuries, including among other things confusion over whether they received all
5 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
6 them to make mathematical computations to analyze whether the wages paid in fact compensated
7 them correctly for all hours worked.

8 94. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
9 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
10 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
11 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
12 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
13 an award of costs and reasonable attorneys' fees.

14 **SIXTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 221**
16 **(Against All Defendants)**

17 95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 96. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
20 receive from an employee any part of wages theretofore paid by said employer to said employee."
21 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
22 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
23 to do so.

24 97. Defendants unlawfully received and/or collected wages from the Employees in the
25 Class by requiring off the clock work and by rounding and automatically deducting time for meal
26 periods when they were not lawfully provided and not paying one hour of pay at the regular rate of
27 compensation for every meal and rest period violation endured by Plaintiff and the other Class
28 members, as alleged above.

1 98. As a direct and proximate cause of the unauthorized deductions, Employees have
2 been damaged, in an amount to be determined at trial.

3 **SEVENTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE § 204**
5 **(Against All Defendants)**

6 99. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 100. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
9 employment are due and payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
11 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
12 during which the labor was performed, and labor performed between the 16th and the last day,
13 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
14 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
15 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
16 calendar days following the close of the payroll period.” As detailed above, Defendants
17 maintained a consistently applied policy and practice of not paying all wages earned between the
18 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
19 between the 16th and the last day of the month between the 1st and 10th day of the following month.
20 Defendants similarly failed to pay all wages earned by not more than seven calendar days
21 following the close of the payroll period. Defendants also committed ongoing violations by failing
22 to issue compliant wage statements to Plaintiff and the Class members.

23 101. All wages due and owing to Plaintiff and the Class members, including as required
24 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
25 required by Labor Code § 1194 and other sections became due and payable to each employee in
26 each pay period that he or she was not provided with a meal period or rest period or paid straight
27 or overtime wages to which he or she was entitled.

28 102. Defendants violated Labor Code § 204 by systematically refusing to timely pay

1 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
2 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
3 payday for the period involved, not less than the applicable minimum wage for all hours worked in
4 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
5 hours than those fixed by the order or under conditions of labor prohibited by the order is
6 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
7 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
8 penalties under paragraph 20 of the applicable IWC Wage Orders.

9 103. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
10 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
11 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
12 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
13 applicable IWC Wage Orders.

14 **EIGHTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 203**
16 **(Against All Defendants)**

17 104. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 105. Plaintiff and numerous Class members are no longer employed by Defendants; they
20 either quit Defendants’ employ or were fired therefrom.

21 106. Defendants failed to pay these Employees all wages due and certain at the time of
22 termination or within seventy-two (72) hours of resignation.

23 107. The wages withheld from these Employees by Defendants remained due and owing
24 for more than thirty days from the date of separation from employment.

25 108. Defendants failed to pay Plaintiff and the Class members without abatement, all
26 wages as defined by applicable California law. Among other things, these Employees were not
27 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
28 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of

1 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
2 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
3 required time was willful within the meaning of Labor Code § 203.

4 109. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
5 are required "to pay each employee, on the established payday for the period involved, not less
6 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
7 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
8 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
9 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
10 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
11 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
12 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
13 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
14 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
15 "violates...any provision of this chapter or any order or ruling of the commission."

16 110. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
17 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
18 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
19 shall continue until paid for up to thirty (30) days from the date they were due.

20 **NINTH CAUSE OF ACTION**

21 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

22 **UNDER LABOR CODE § 2802 (Against All Defendants)**

23 111. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 112. Plaintiff and the Class are informed and believe and based thereon allege that
26 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
27 necessary work related expenses they incurred. Defendants required Plaintiff to use his personal
28 cellular phone to respond to and communicate with Defendants and their managers regarding work

1 matters. Defendants thus followed a uniform policy and practice of failing to reimburse
2 Employees for these necessary work related expenses or losses incurred in direct discharge of their
3 job duties during employment with Defendants and at the direction of the Defendants pursuant to
4 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

5 113. Defendants' knowing and willful failure to reimburse lawful necessary work related
6 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
7 things, Defendants did not inform employees of their right to be reimbursed for those work related
8 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
9 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
10 necessary expenses was an expected and essential function of their employment with Defendants
11 and that failure to incur those expenses would have adverse consequences on their employment.

12 114. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
13 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
14 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
15 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
16 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
17 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

18 **TENTH CAUSE OF ACTION**

19 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

20 **(Against All Defendants)**

21 115. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 116. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
24 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
25 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
26 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
27 the public interest within the meaning of Code of Civil Procedure § 1021.5.

28 117. Plaintiff is a "person" within the meaning of Business & Professions Code

1 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
2 relief, restitution, and other appropriate equitable relief.

3 118. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
4 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
5 fraudulent in that Defendants' policy and practice failed to provide the required amount of
6 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
7 Class members for all hours worked, due to systematic business practices as alleged herein that
8 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
9 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
10 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
11 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

12 119. Wage-and-hour laws express fundamental public policies. Paying employees their
13 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
14 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
15 vigorously to enforce minimum labor standards, to ensure that employees are not required or
16 permitted to work under substandard and unlawful conditions, and to protect law-abiding
17 employers and their employees from competitors who lower costs to themselves by failing to
18 comply with minimum labor standards.

19 120. Defendants have violated statutes and public policies. Through the conduct alleged
20 in this Complaint Defendants have acted contrary to these public policies, have violated specific
21 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
22 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
23 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
24 guaranteed to all employees under the law.

25 121. Defendants' conduct, as alleged above, constitutes unfair competition in violation
26 of the Business & Professions Code § 17200 *et seq.*

27 122. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
28 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of

1 reasonable care should have known that their conduct was unlawful; therefore their conduct
2 violates the Business & Professions Code § 17200 *et seq.*

3 123. By the conduct alleged herein, Defendants have engaged and continue to engage in
4 a business practice which violates California and federal law, including but not limited to, the
5 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
6 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
7 should issue declaratory and other equitable relief pursuant to California Business & Professions
8 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
9 competition, including restitution of wages wrongfully withheld.

10 124. As a proximate result of the above-mentioned acts of Defendants, Employees have
11 been damaged, in a sum to be proven at trial.

12 125. Unless restrained by this Court Defendants will continue to engage in such unlawful
13 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
14 such orders or judgments as may be necessary to prevent the use by Defendants or their agents or
15 employees of any unlawful or deceptive practice prohibited by the Business & Professions Code,
16 including but not limited to the disgorgement of such profits as may be necessary to restore
17 Employees to the money Defendants have unlawfully failed to pay.

18 **ELEVENTH CAUSE OF ACTION**

19 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

20 **(Against All Defendants)**

21 126. Plaintiff realleges and incorporate all preceding paragraphs, as though set
22 forth in full herein.

23 127. Plaintiff and the Employees in the Class are also aggrieved employees as
24 defined under Labor Code § 2699(c) in that they suffered the violations alleged in this
25 Complaint and either were or are employed by Defendants (“Aggrieved Employees”)
26 during the relevant time period.

27 128. In failing to pay Aggrieved Employees minimum wages and overtime, not
28 providing proper meal and rest periods, failing to provide accurate itemized wage

1 statements, and failing to pay Employees wages upon termination or timely upon
2 resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees
3 wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed
4 to maintain records showing accurate hours worked daily and the wages paid to Aggrieved
5 Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC
6 Wage Orders.

7 129. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
8 2699 for Defendants' violation of Labor Code provisions included under Labor Code §
9 2699.5, including the penalty provisions, without limitation, based, inter alia, on the
10 following California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7,
11 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199,
12 2802 and 2698 *et seq.*

13 130. More specifically, after complying with the notice procedures of Labor Code
14 § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney
15 General and the other similarly Aggrieved Employees, a PAGA claim for violations of the
16 above addressed underlying claims and seeking penalties as specified by the applicable
17 corresponding provisions, including as follows:

18 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
19 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
20 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
21 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
22 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
23 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
24 to Labor Code § 2699(g)(1);

25 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
26 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
27 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
28 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC

1 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
2 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
3 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
4 pursuant to Labor Code § 2699(g)(1);

5 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
6 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
7 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
8 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
9 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
10 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
11 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
12 providing inaccurate wage statements and failing to maintain records as required under Labor
13 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
14 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
15 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
16 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
17 citation, ...";

18 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
19 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
20 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
21 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
22 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
23 § 2699(g)(1);

24 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
25 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
26 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
27 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
28 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and

2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(g) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections: For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

131. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seeks the penalties and remedies set forth in Labor Code § 558, which 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...

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

132. Plaintiff has exhausted her administrative remedies by submitting a certified letter to the LWDA and Defendants on August 2, 2023 (LWDA-CM-972425-23)

1 addressing in detail the specific provisions of the Labor Code Defendants have violated and
2 addressing the facts and legal theories to support the alleged violations and requested
3 penalties. The LWDA has not provided notice of its intent to investigate the alleged
4 violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this
5 claim seeking penalties under the PAGA for the violations addressed herein and in the
6 PAGA Notice letter and the original Complaint.

7 **RELIEF REQUESTED**

8 WHEREFORE, Plaintiff prays for the following relief:

- 9 1. For an order certifying this action as a class action;
- 10 2. For compensatory damages in the amount of the unpaid minimum wages for work
11 performed by Employees and unpaid overtime compensation from at least four years prior to the
12 filing of this action, as may be proven;
- 13 3. For liquidated damages in the amount equal to the unpaid minimum wage and
14 interest thereon, from at least four years prior to the filing of this action, according to proof;
- 15 4. For compensatory damages in the amount of all unpaid wages, including overtime
16 and double-time pay, as may be proven;
- 17 5. For compensatory damages in the amount of the hourly wage made by Employees
18 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
19 years prior to the filing of this action, as may be proven;
- 20 6. For compensatory damages in the amount of the hourly wage made by Employees
21 for each day requisite rest breaks were not provided or were deficiently provided where no
22 premium pay was paid therefor from at least four years prior to the filing of this action, as may be
23 proven;
- 24 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 25 8. For restitution and/or damages and penalties for Defendants' failure to pay all
26 wages due twice monthly under Labor Code § 204, as may be proven;
- 27 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
28 for all class members in violation of Labor Code § 221, as may be proven;

1 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
2 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

3 11. For damages and restitution for failure to reimburse all reasonable and necessary
4 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

5 12. For restitution for unfair competition pursuant to Business & Professions Code
6 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

7 13. For an order enjoining Defendants and their agents, servants, and employees, and
8 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
9 duties adumbrated in this Complaint;

10 14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

11 15. For penalties under Labor Code § 558, as may be proven;

12 16. For other wages and penalties under the Labor Code as may be proven;

13 17. For all general, special, and incidental damages as may be proven;

14 18. For an award of pre-judgment and post-judgment interest;

15 19. For an award providing for the payment of the costs of this suit;

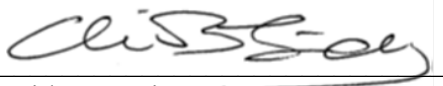
16 20. For an award of attorneys' fees; and

17 21. For such other and further relief as this Court may deem proper and just.

18
19 DATED: October 6, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

20 By


21 David Yeremian
22 Alvin B. Lindsay
23 Attorneys for Plaintiff Jerry D. Hagerty
24 and all others similarly situated
25
26
27
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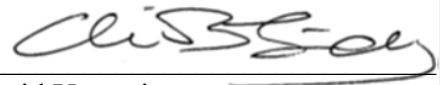
DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: October 6, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

By



David Yeremian

Alvin B. Lindsay

Attorneys for Plaintiff Jerry D. Hagerty
and all others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

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[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above transmission.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 6, 2023, at Glendale, California.

California.


Sasha Zambrano