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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Alexandra Miller, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

YOBANI BELTRAN-GUTIERREZ,
individually, and on behalf of other
members of the general public similarly
situated, and as an aggrieved employee
pursuant to the Private Attorneys General
Act ("PAGA"),

Plaintiff,

vs.

STEELE ENTERPRISES, INC., a
California corporation; A. L. GILBERT
COMPANY, a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: CV-23-004929

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code § 227.3 (Failure to Pay Vested Vacation Time Upon Termination);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Yobani Beltran-Gutierrez, individually and on behalf of all other members of
2 the public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of Information
5 forms with the California Secretary of State designating a principal place of business in
6 Oakdale, County of Stanislaus, in accordance with California Corporations Code section
7 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants
8 employ persons in this county, and employed Plaintiff in this county, and thus a substantial
9 portion of the transactions and occurrences related to this action occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff Yobani Beltran-Gutierrez is a resident of Turlock, in Stanislaus County,
12 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
13 approximately September 2020 to March 2023. Plaintiff worked for Defendants as a Forklift
14 Driver/Order Selector at their facility in Ceres, California. During his employment, Plaintiff
15 typically worked ten hours or more per day and five (5) days per week. Plaintiff's primary job
16 duties included, without limitation, operating forklifts, selecting products for order fulfillment,
17 wrapping pallets, and delivering completed pallets to the shipping department.

18 5. STEELE ENTERPRISES, INC. was and is, upon information and belief, a
19 California corporation, and at all times hereinafter mentioned, an employer whose employees
20 are engaged throughout this county and the State of California.

21 6. A. L. GILBERT COMPANY was and is, upon information and belief, a
22 California corporation, and at all times hereinafter mentioned, an employer whose employees
23 are engaged throughout this county and the State of California.

24 7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
25 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
26 complaint and serve such fictitiously named Defendants once their names and capacities
27 become known.

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1 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
2 were the partners, agents, owners, or managers of STEELE ENTERPRISES, INC. and A. L.
3 GILBERT COMPANY at all relevant times.

4 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
5 acts and omissions alleged herein was performed by, or is attributable to, STEELE
6 ENTERPRISES, INC.; A. L. GILBERT COMPANY; and/or DOES 1 through 10 (collectively,
7 “Defendants” or “STEELE”), each acting as the agent, employee, alter ego, and/or joint venturer
8 of, or working in concert with, each of the other co-Defendants and was acting within the course
9 and scope of such agency, employment, joint venture, or concerted activity with legal authority
10 to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
11 represent, the official policy of Defendants.

12 10. At all relevant times, Defendants, and each of them, ratified each and every act
13 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
14 and abetted the acts and omissions of each and all the other Defendants in proximately causing
15 the damages herein alleged.

16 11. Plaintiff is informed and believes, and thereon alleges, that each of said
17 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
18 omissions, occurrences, and transactions alleged herein.

19 12. Under California law, Defendants are jointly and severally liable as employers
20 for the violations alleged herein because they have each exercised sufficient control over the
21 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
22 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
23 their work schedule and/or conditions of employment, determined their rate of pay, and
24 maintained their employment records. Defendants suffered or permitted Plaintiff and class
25 members to work and/or “engaged” Plaintiff and class members so as to create a common-law
26 employment relationship. As joint employers of Plaintiff and class members, Defendants are
27 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
28 class members under the law.

1 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
3 members because Defendants have:

- 4 (a) jointly exercised meaningful control over the work performed by Plaintiff
5 and class members;
- 6 (b) jointly exercised meaningful control over Plaintiff's and class members'
7 wages, hours, and working conditions, including the quantity, quality
8 standards, speed, scheduling, and operative details of the tasks performed
9 by Plaintiff and class members;
- 10 (c) jointly required that Plaintiff and class members perform work which is
11 an integral part of Defendants' businesses; and
- 12 (d) jointly exercised control over Plaintiff and class members as a matter of
13 economic reality in that Plaintiff and class members were dependent on
14 Defendants, who shared the power to set the wages of Plaintiff and class
15 members and determined their working conditions, and who jointly
16 reaped the benefits from the underpayment of their wages and
17 noncompliance with other statutory provisions governing their
18 employment.

19 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
20 there has existed a unity of interest and ownership between Defendants such that any
21 individuality and separateness between the entities has ceased.

22 15. STEELE ENTERPRISES, INC.; A. L. GILBERT COMPANY; and DOES 1
23 through 10 are therefore alter egos of each other.

24 16. Adherence to the fiction of the separate existence of Defendants would permit an
25 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
26 liability for the wrongful acts committed by them under the name STEELE.

27 17. Plaintiff further alleges, upon information and belief, that Defendants STEELE
28 ENTERPRISES, INC. and A. L. GILBERT COMPANY are alter egos of each other for the

1 following reasons:

- 2 (a) On the California Secretary of State's website
3 (<https://bizfileonline.sos.ca.gov/>), STEELE ENTERPRISES, INC. and A.
4 L. GILBERT COMPANY have the same principal address and mailing
5 address, "304 N[.] YOSEMITE AVE[NUE] OAKDALE, CA 95361";
- 6 (b) According to their most recent "Statement of Information" forms filed
7 with the California Secretary of State, STEELE ENTERPRISES, INC.
8 and A. L. GILBERT COMPANY share common officers and/or directors,
9 including, but not limited to, David Gilbert, who serves as Chief
10 Executive Officer; Robert T Gilbert, who serves as Chief Financial
11 Officer; and Robert Gallagher, who serves as a director, for STEELE
12 ENTERPRISES, INC. and A. L. GILBERT COMPANY; and
- 13 (c) On information and belief, STEELE ENTERPRISES, INC. and A. L.
14 GILBERT COMPANY utilize the same standardized employment forms
15 and issue the same employment policies.

16 **GENERAL ALLEGATIONS**

17 18. Defendants are one of the oldest and largest feed milling companies in
18 California's central valley, and formulate, manufacture, and distribute feed for all breeds of
19 animals. Upon information and belief, Defendants maintain a single, centralized Human
20 Resources ("HR") department at their company headquarters in Oakdale, California, which is
21 responsible for the recruiting and hiring of new employees, and communicating and
22 implementing Defendants' company-wide policies, including timekeeping policies and meal
23 and rest period policies, to employees throughout California.

24 19. In particular, Plaintiff and class members, on information and belief, received
25 the same standardized documents and/or written policies. Upon information and belief, the
26 usage of standardized documents and/or written policies, including new-hire documents,
27 indicate that Defendants dictated policies at the corporate level and implemented them
28 company-wide, regardless of their employees' assigned locations or positions. Upon

1 information and belief, Defendants set forth uniform policies and procedures in several
2 documents provided at an employee's time of hire.

3 20. Upon information and belief, Defendants maintain a centralized Payroll
4 department at their company headquarters in Oakdale, California, which processes payroll for
5 all non-exempt, hourly paid employees working for Defendants at their various locations and
6 jobsites in California, including Plaintiff and class members. Based upon information and
7 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
8 employees in California, irrespective of their work locations. Upon information and belief,
9 Defendants process payroll for departing employees in the same manner throughout the State
10 of California, regardless of the manner in which each employee's employment ends.

11 21. Defendants continue to employ non-exempt or hourly paid employees in
12 California.

13 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
15 advisors knowledgeable about California labor and wage law, employment and personnel
16 practices, and about the requirements of California law.

17 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
18 members were not paid for all hours worked because all hours worked were not recorded.

19 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive certain wages for
21 overtime compensation and that they were not receiving certain wages for overtime
22 compensation.

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to be paid at a regular rate of
25 pay, and corresponding rates of pay for overtime wages and/or meal and rest period premiums,
26 that included as eligible income all remuneration required by law, including but not limited to,
27 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
28 compensation, but failed to include all forms of remuneration in calculating the regular rate of

1 pay for Plaintiff and class members.

2 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive at least minimum
4 wages for compensation and that they were not receiving at least minimum wages for work that
5 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
6 class members were not paid at least minimum wages for work done off-the-clock.

7 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to meal periods in accordance
9 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
10 additional hour of pay at their regular rates of pay when they were not provided with timely,
11 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
12 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
13 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

14 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to rest periods in accordance
16 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
17 additional hour of pay at their regular rates of pay when they were not authorized and permitted
18 to take a compliant rest period and that Plaintiff and class members were not authorized and
19 permitted to take compliant rest periods or provided with payment of one (1) additional hour of
20 pay at their regular rates of pay when they were not authorized and permitted to take a compliant
21 rest period.

22 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive complete and
24 accurate wage statements in accordance with California law. In violation of the California
25 Labor Code, Plaintiff and class members were not provided complete and accurate wage
26 statements.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that they had a duty to maintain accurate and complete payroll records in

1 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
2 knowingly, and intentionally failed to do so.

3 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they were required to pay departing employees all vested vacation
5 wages that were owed to them at the end of their employment. In violation of the California
6 Labor Code, Defendants failed to pay Plaintiff and class members all vested vacation time at
7 the end of their employment, causing a forfeiture of vested vacation wages.

8 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to timely payment of all
10 wages earned upon termination of employment. In violation of the California Labor Code,
11 Plaintiff and class members did not receive payment of all wages due, including, but not limited
12 to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or
13 vested vacation wages, within permissible time periods.

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to timely payment of wages
16 during their employment. In violation of the California Labor Code, Plaintiff and class members
17 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
18 wages, meal and rest period premiums, and/or sick leave pay, within permissible time periods.

19 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive sick leave benefits
21 to be paid at a regular rate of pay, that included, as eligible income, all income derived from
22 incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In violation of
23 of the California Labor Code, Defendants failed to include all forms of remuneration in
24 calculating the regular rate of pay for sick leave pay.

25 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that they had a duty to maintain, for Plaintiff and class members, a
27 temperature in work areas that provided reasonable comfort consistent with industry-wide
28 standards for the nature of the process and the work performed, and to take all feasible means

1 to reduce excessive heat or humidity to a degree providing reasonable comfort, but failed to do
2 so.

3 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendants knew or should have known that Defendants had a duty to provide
5 Plaintiff and class members with written notice of the material terms of their employment with
6 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

7 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
9 and class members for all hours worked, and that Defendants had the financial ability to pay
10 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
11 represented to Plaintiff and class members that they were properly denied wages, all in order to
12 increase Defendants' profits.

13 **PAGA REPRESENTATIVE ALLEGATIONS**

14 38. At all times herein set forth, PAGA provides that any provision of law under the
15 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
16 collected by the Labor and Workforce Development Agency ("LWDA") for violations of the
17 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by
18 aggrieved employees in a civil action brought on behalf of themselves and other current or
19 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

20 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
21 person who was employed by the alleged violator and against whom one or more of the alleged
22 violations was committed."

23 40. Plaintiff and other current and former employees of Defendants are "aggrieved
24 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
25 or former employees and one or more of the alleged violations were committed against them.

26 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
27 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
28 requirements have been met:

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of the
3 specific provisions of the California Labor Code alleged to have been
4 violated, including the facts and theories to support the alleged violation.
- 5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(a) and any employer response to that notice shall be accompanied
7 by a filing fee of seventy-five dollars (\$75).
- 8 (c) The LWDA shall notify the employer and the aggrieved employee or
9 representative by certified mail that it does not intend to investigate the
10 alleged violation ("LWDA Notice") within sixty (60) calendar days of the
11 postmark date of the aggrieved employee's notice. Upon receipt of the
12 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
13 calendar days of the postmark date of the aggrieved employee's notice,
14 the aggrieved employee may commence a civil action pursuant to
15 California Labor Code section 2699 to recover civil penalties.

16 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
17 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
18 other than those listed in Section 2699.5 after the following requirements have been met:

- 19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of the
21 specific provisions of the California Labor Code alleged to have been
22 violated (other than those listed in Section 2699.5), including the facts
23 and theories to support the alleged violation.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be accompanied
26 by a filing fee of seventy-five dollars (\$75).
- 27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice sent by the aggrieved

1 employee or representative. The employer shall give written notice
2 within that period of time by certified mail to the aggrieved employee or
3 representative and by online filing with the LWDA if the alleged violation
4 is cured, including a description of actions taken, and no civil action
5 pursuant to Section 2699 may commence. If the alleged violation is not
6 cured within the 33-day period, the aggrieved employee may commence
7 a civil action pursuant to Section 2699.

8 43. On September 6, 2023, Plaintiff provided written notice by online filing to the
9 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
10 Code alleged to have been violated, including facts and theories to support the alleged
11 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
12 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
13 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
14 PAGA Case Number LWDA-CM-980037-23. A true and correct copy of Plaintiff's written
15 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

16 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
17 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
18 to investigate Plaintiff's claims and Defendants have not cured the violations.

19 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
21 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510,
22 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

23 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare Commission
26 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
27 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
28 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for

each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

47. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

48. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

51. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

52. Plaintiff’s proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

53. Plaintiff’s proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial (“Subclass”).

1 54. Members of the Class and Subclass are referred to herein as “class members.”

2 55. Plaintiff reserves the right to redefine the Class and Subclass and to add
3 additional subclasses as appropriate based on further investigation, discovery, and specific
4 theories of liability.

5 56. There are common questions of law and fact as to class members that
6 predominate over questions affecting only individual members, including, but not limited to:

- 7 (a) Whether Defendants required Plaintiff and class members to work over
8 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
9 hours per week and failed to pay all legally required overtime
10 compensation to Plaintiff and class members;
- 11 (b) Whether Defendants failed to include all forms of remuneration in the
12 “regular rate” of pay as required by law for purposes of paying overtime
13 wages and/or meal and rest period premiums to Plaintiff and class
14 members;
- 15 (c) Whether Defendants failed to pay Plaintiff and class members at least
16 minimum wages for all hours worked;
- 17 (d) Whether Defendants failed to provide Plaintiff and class members with
18 meal periods;
- 19 (e) Whether Defendants failed to authorize and permit Plaintiff and class
20 members to take rest periods;
- 21 (f) Whether Defendants provided Plaintiff and class members with complete
22 and accurate wage statements as required by California Labor Code
23 section 226(a);
- 24 (g) Whether Defendants maintained accurate payroll records as required by
25 California Labor Code section 1174(d);
- 26 (h) Whether Defendants failed to pay Plaintiff and class members all vested
27 vacation time as wages at their final rate in accordance with the terms and
28 conditions of Defendants’ employment contract and/or policy;

- 1 (i) Whether Defendants failed to pay earned overtime wages, minimum
2 wages, meal and rest period premiums, sick leave pay, and/or vested
3 vacation wages due to Plaintiff and class members upon their discharge;
- 4 (j) Whether Defendants failed timely to pay overtime wages, minimum
5 wages, meal and rest period premiums, and/or sick leave pay due to
6 Plaintiff and class members during their employment;
- 7 (k) Whether Defendants failed to properly calculate the “regular rate” of pay
8 upon which Plaintiff’s and class members’ sick leave rate of pay was
9 based;
- 10 (l) Whether Defendants failed to maintain for Plaintiff and class members a
11 temperature in work areas that provided reasonable comfort consistent
12 with industry-wide standards for the nature of the process and the work
13 performed, and to take all feasible means to reduce excessive heat or
14 humidity to a degree providing reasonable comfort;
- 15 (m) Whether Defendants failed to provide written notice of information
16 material to Plaintiff’s and class members’ employment with Defendants;
- 17 (n) Whether Defendants engaged in unlawful and unfair business practices in
18 violation of California Business & Professions Code sections 17200, *et*
19 *seq.*; and
- 20 (o) The appropriate amount of damages, restitution, or monetary penalties
21 resulting from Defendants’ violations of California law.

22 57. There is a well-defined community of interest in the litigation and the class
23 members are readily ascertainable:

- 24 (a) Numerosity: The class members are so numerous that joinder of all
25 members would be unfeasible and impractical. The membership of the
26 entire class is unknown to Plaintiff at this time; however, the class is
27 estimated to be greater than one hundred (100) individuals and the
28 identity of such membership is readily ascertainable by inspection of

Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class

1 members who are not named in the complaint with a type of anonymity
2 that allows for the vindication of their rights while simultaneously
3 protecting their privacy.

4 **FIRST CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**
6 **(Against all Defendants)**

7 58. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 59. Labor Code section 1198 makes it illegal to employ an employee under
10 conditions of labor that are prohibited by the applicable wage order. California Labor Code
11 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
12 be the . . . standard conditions of labor for employees. The employment of any employee . . .
13 under conditions of labor prohibited by the order is unlawful.”

14 60. California Labor Code section 1198 and the applicable IWC Wage Order provide
15 that it is unlawful to employ persons without compensating them at a rate of pay either time-
16 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
17 worked by the person on a daily or weekly basis.

18 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
19 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
20 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
21 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

22 62. The applicable IWC Wage Order further provides that Defendants are and were
23 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
24 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
25 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
26 employee, including nondiscretionary bonuses and incentive pay.

27 63. California Labor Code section 510 codifies the right to overtime compensation
28 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)

1 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
2 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
3 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
4 the seventh (7th) day of work.

5 64. During the relevant time period, Defendants willfully failed to pay all overtime
6 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
7 members were not paid overtime premiums for all of the hours they worked in excess of eight
8 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
9 in a week, because all hours worked were not recorded.

10 65. First, during the relevant time period, Defendants had, and continue to have, a
11 company-wide policy and/or practice of requiring Plaintiff and class members to perform work
12 off-the-clock before their shifts, such as attending mandatory meetings. For example, at least
13 2-3 times per month, before he was permitted to clock in for his scheduled shift, Plaintiff was
14 required to attend meetings held by Defendants' managers to discuss work-related matters, such
15 as safety protocols or production expectations, which could take up to 15 minutes per instance.
16 Thus, Defendants required Plaintiff and class members to work off-the-clock and did not
17 compensate them for this time worked.

18 66. Second, during the relevant period, Defendants had, and continue to have, a
19 company-wide policy and/or practice of understaffing their facilities while assigning heavy
20 workloads, including meeting order fulfillment deadlines and productivity expectations,
21 resulting in a failure to provide Plaintiff and class members with adequate meal period coverage.
22 Defendants also had a practice of failing to schedule meal periods which, in conjunction with
23 the assignment of heavy workloads, further caused Plaintiff and class members to not be
24 relieved of their duties for compliant meal periods. As a result of this lack of meal period
25 coverage, Plaintiff and class members were not always afforded uninterrupted 30-minute meal
26 periods during shifts when they were entitled to receive a meal period. Additionally, Plaintiff
27 and class members were required to discuss work-related matters with supervisors and
28 management during unpaid meal periods. For example, due to the lack of coverage, Plaintiff's

1 meal periods were interrupted by Defendants' supervisors who wanted to discuss work-related
2 issues, such as forklift safety, and which often required Plaintiff to return to work immediately
3 to assess an urgent situation. Thus, Plaintiff and class members missed meal periods and/or had
4 them interrupted to handle their assigned workloads and responsibilities, and Defendants did
5 not pay Plaintiff and class members for the time they continued to perform tasks during meal
6 periods.

7 67. Third, on information and belief, because Defendants frowned upon employees
8 accruing meal period penalties, Defendants' managers adjusted Plaintiff's and class members'
9 time records to reflect compliant meal periods, even when they did not receive a compliant meal
10 period. Moreover, Defendants' company-wide timekeeping system prevented Plaintiff and
11 class members from recording all hours worked when their meal periods were shortened or
12 interrupted, because the system locked out Plaintiff and class members once they clocked out
13 for a meal period, and would not permit them to clock back in from a meal period before 30
14 minutes had elapsed. Thus, Defendants did not record all hours worked during meal periods
15 and Plaintiff and class members performed work during meal periods for which they were not
16 paid.

17 68. Defendants knew or should have known that as a result of these company-wide
18 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
19 the-clock and during meal periods, and were suffered or permitted to perform work for which
20 they were not paid. Because Plaintiff and class members sometimes worked shifts of eight (8)
21 hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work
22 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
23 overtime wages for all of the overtime hours they actually worked.

24 69. Moreover, Defendants did not pay Plaintiff and class members the correct
25 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
26 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
27 and/or other forms of remuneration. However, in violation of the California Labor Code, on
28 information and belief, Defendants failed to incorporate all compensation, including incentive

1 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
2 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
3 when Plaintiff and class members worked overtime and received these other forms of pay,
4 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

5 70. For example, Defendants paid Plaintiff and class members incentive pay and/or
6 nondiscretionary bonuses which were listed on Plaintiff's and class members' wage statements
7 as "Bonus." During pay periods that Plaintiff and class members were paid overtime wages,
8 Defendants did not incorporate these payments into Plaintiff's and class members' regular rate
9 of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked.
10 Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly rate of pay
11 instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the
12 overtime rates of pay based on all remuneration paid has resulted in an underpayment of
13 overtime wages to Plaintiff and class members on a company-wide basis.

14 71. Defendants' failure to pay Plaintiff and class members the balance of overtime
15 compensation as required by California law, violates the provisions of California Labor Code
16 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
17 members are entitled to recover from Defendants their unpaid overtime compensation, as well
18 as interest, costs, and attorneys' fees.

19 **SECOND CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 21 **Minimum Wages** 22 **(Against all Defendants)**

23 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
26 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
27 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
28 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the

1 time during which an employee is subject to the control of an employer, and includes all the
2 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
3 Code Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

4 74. As set forth above, Defendants had a company-wide policy and/or practice
5 requiring Plaintiff and class members to perform work while off-the-clock before their shifts,
6 including attending meetings with managers or supervisors. Defendants failed to track this time
7 Plaintiff and class members spent working off-the-clock, and Plaintiff and class members
8 received no compensation for this time.

9 75. As also stated, due to Defendants’ policies and/or practices of understaffing their
10 facilities while assigning heavy workloads, failing to schedule meal periods, and requiring
11 employees to attend meetings during unpaid meal periods, Plaintiff and class members were
12 impeded from taking all uninterrupted meal periods to which they were entitled and were
13 required to work off-the-clock during meal periods, have their meal periods interrupted, and/or
14 were otherwise not relieved of all duties during unpaid meal periods. As a result, Plaintiff and
15 class members were not afforded timely, uninterrupted thirty (30) minute meal periods during
16 shifts in which they were entitled to receive meal periods. Defendants did not pay Plaintiff and
17 class members for the time they continued to perform tasks during meal periods.

18 76. Further, on information and belief, because Defendants frowned upon employees
19 accruing meal period penalties, Defendants’ managers adjusted Plaintiff’s and class members’
20 time records to reflect compliant meal periods, even when they did not receive a compliant meal
21 period. Moreover, Defendants’ company-wide timekeeping system prevented Plaintiff and
22 class members from recording all hours worked when their meal periods were shortened or
23 interrupted, because the system locked out Plaintiff and class members once they clocked out
24 for a meal period, and would not permit them to clock back in from a meal period before 30
25 minutes had elapsed. Thus, Defendants did not record all hours worked during meal periods
26 and Plaintiff and class members performed work during meal periods for which they were not
27 paid.

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77. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

78. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

79. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

80. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

81. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

82. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a), and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total

1 hours worked is no more than twelve (12) hours, the second meal period may be waived by
2 mutual consent of the employer and the employee only if the first meal period was not waived.

3 83. During the relevant time period, as stated, Defendants had, and continue to have,
4 a company-wide policy and/or practice of understaffing while assigning heavy workloads,
5 which has resulted in a lack of meal period coverage and prevented Plaintiff and class members
6 from taking all timely, uninterrupted meal periods to which they were entitled. Further, as
7 stated, Defendants had company-wide practices and/or policies of failing to schedule meal
8 periods, which further caused Plaintiff and class members to not be relieved of their duties for
9 compliant meal periods.

10 84. Defendants' practices and policies prevented Plaintiff and class members from
11 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
12 members had to work through all or part of their meal periods, had their meal periods
13 interrupted, and/or had to wait extended periods of time before taking meal periods. For
14 example, according to Plaintiff's time records, on February 11, 2023, he clocked in at the start
15 of his shift at 4:02 a.m. and clocked out at the end of his shift at 9:04 a.m., working a total of
16 five (5) hours and two (2) minutes (or 5.03 hours), without clocking out for a meal period; on
17 September 24, 2022, he clocked in at the start of his shift at 3:53 a.m. and clocked out at the
18 end of his shift at 9:02 a.m., working a total of five (5) hours and nine (9) minutes (or 5.15
19 hours), without clocking out for a meal period; and on August 20, 2022, he clocked in at the
20 start of his shift at 3:56 a.m. and clocked out at the end of his shift at 9:03 a.m., working a total
21 of five (5) hours and seven (7) minutes (or 5.12 hours), without clocking out for a meal period.
22 Further, as examples of late meal periods, according to Plaintiff's time records, on March 2,
23 2023, he clocked in at the start of his shift at 5:33 a.m. and clocked out for his meal period at
24 10:45 a.m., working a total of five (5) hours and 12 minutes (or 5.20 hours), before he was able
25 to take his meal period; on February 7, 2023, he clocked in at the start of his shift at 4:01 a.m.
26 and clocked out for his meal period at 9:03 a.m., working a total of five (5) hours and two (2)
27 minutes (or 5.03 hours), before he was able to take his meal period; and on January 26, 2023,
28 he clocked in at the start of his shift at 4:02 a.m. and clocked out for his meal period at 9:05

1 a.m., working a total of five (5) hours and three (3) minutes (or 5.05 hours), before he was able
2 to take his meal period.

3 85. Also, as stated, on information and belief, because Defendants frowned upon
4 employees accruing meal period penalties, Defendants' management adjusted Plaintiff's and
5 class members' time records to reflect compliant meal periods, even when they did not receive
6 a compliant meal period. Also, as stated, Defendants' company-wide timekeeping system
7 prevented Plaintiff and class members from recording all hours worked when their meal periods
8 were shortened or interrupted, because the system locked out Plaintiff and class members once
9 they clocked out for a meal period, and would not permit them to clock back in from a meal
10 period before 30 minutes had elapsed. Plaintiff and class members did not sign valid meal
11 period waivers on days that they were entitled to meal periods and were not relieved of all
12 duties.

13 86. At all times herein mentioned, Defendants knew or should have known that, as a
14 result of these policies, Plaintiff and class members were prevented from being relieved of all
15 duties and required to perform some of their assigned duties during meal periods. Defendants
16 further knew or should have known that Defendants did not pay Plaintiff and class members
17 meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

18 87. Moreover, Defendants engaged in a company-wide practice and/or policy of not
19 paying meal period premiums owed when compliant meal periods are not provided. Because
20 of this practice and/or policy, Plaintiff and class members have not received premium pay for
21 missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff
22 and class members compliant meal periods in violation of California Labor Code sections 226.7,
23 512(a), and 516 and failed to pay the full meal period premiums due.

24 88. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
26 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
27 rate of compensation for each work day that the meal period was not provided.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

90. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and class members’ employment by Defendants.

91. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

92. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

93. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide

1 practices, including understaffing and assigning heavy workloads, prevented Plaintiff and class
2 members from being relieved of all duty to take rest periods. Additionally, Defendants failed
3 to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period
4 coverage, further led to Plaintiff and class members not being authorized and permitted to take
5 rest periods.

6 94. Furthermore, Defendants maintained and implemented a company-wide on-
7 premises rest period policy, which mandated that Plaintiff and class members remain on the
8 premises during their rest periods. Because Plaintiff and class members were restricted from
9 leaving Defendants' premises during rest periods, they were denied the ability to use their rest
10 periods freely for their own purposes, such as completing personal errands. Thus, Defendants
11 effectively maintained control over Plaintiff and class members during rest periods.

12 95. As a result of Defendants' practices and policies, Plaintiff and class members
13 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
14 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
15 his rest periods interrupted by supervisors to discuss work-related matters and attend to urgent
16 issues because of the lack of coverage and Defendants' failure to schedule rest periods for
17 employees.

18 96. Defendants have also engaged in a company-wide practice and/or policy of not
19 paying rest period premiums owed when compliant rest periods are not authorized and
20 permitted. Because of this practice and/or policy, Plaintiff and class members have not received
21 premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and class
22 members rest periods and failed to pay them rest period premiums due, in violation of Labor
23 Code sections 226.7 and 516, and the applicable IWC Wage Order.

24 97. Defendants' conduct violates the applicable IWC Wage Order and California
25 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
26 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
27 compensation for each work day that a compliant rest period was not authorized and permitted.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 99. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the name and address
10 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
11 and all applicable rates of pay.

12 100. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
14 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
15 fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of
16 the legal entity that is the employer; and all applicable hourly rates in effect during the pay
17 period, including rates of pay for overtime wages and/or paid sick leave, and the corresponding
18 number of hours worked at each hourly rate. Specifically, Defendants violated sections
19 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

20 101. First, because Defendants did not record the time Plaintiff and Subclass members
21 spent working off the clock and deducted time from their records for meal periods that were
22 interrupted and/or missed (and therefore time for which they should have been paid),
23 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
24 Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason,
25 Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass
26 members, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay
27 in effect during the pay period and the corresponding accurate number of hours worked at each
28 hourly rate, in violation of section 226(a)(9).

102. Second, because Defendants did not calculate Plaintiff's and Subclass members' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

103. Third, and separate from these violations, Defendants issued uniform wage statements to Plaintiff and Subclass members that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Plaintiff's and Subclass members' wage statements incorrectly list the employer's address as "4319 Jessup Road Ceres CA 93507," but, according to the California Secretary of State's website, Defendants' address should be "304 N YOSEMITE AVENUE OAKDALE, CA 95361."

104. The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list 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; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

105. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
3 applicable piece rate paid to, employees employed at the respective plants or
4 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
5 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
6 members showing the daily hours they worked and the wages paid thereto as a result of failing
7 to record the off-the-clock hours that they worked.

8 106. California Labor Code section 1198 provides that the maximum hours of work
9 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
10 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
11 of any employees for longer hours than those fixed by the order or under conditions of labor
12 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
13 are required to keep accurate time records showing when the employee begins and ends each
14 work period and meal period. During the relevant time period, Defendants engaged in company-
15 wide practices and/or policies of failing to record actual hours worked (including falsifying time
16 records by recording that compliant meal periods were taken regardless of if or when meal
17 periods were actually taken), and thereby failed to keep accurate records of work period and
18 meal period start and end times for Plaintiff and Subclass members, in violation of section 1198.

19 107. Plaintiff and Subclass members are entitled to recover from Defendants the
20 greater of their actual damages caused by Defendants’ failure to comply with California Labor
21 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
22 employee.

23 SIXTH CAUSE OF ACTION

24 Violation of California Labor Code §§ 227.3—Failure to Pay All Vested Vacation Time 25 Upon Termination 26 (Against all Defendants)

27 108. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

109. At all relevant times herein set forth, California Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken his or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

110. During the relevant time period, Defendants had a company-wide policy and practice of failing to pay Plaintiff and class members vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. For example, Plaintiff had earned vested vacation pay until his employment with Defendants ended on or about March 24, 2023. However, Defendants did not pay Plaintiff the balance of his accrued and unused vacation wages at the end of his employment. Defendants' failure to pay Plaintiff and class members all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages, in violation of California Labor Code section 227.3.

111. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

113. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or vested vacation wages that that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

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114. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

115. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or vested vacation wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

116. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

117. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

118. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not timely paid to Plaintiff and class members during their employment.

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119. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

120. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

121. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

122. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

123. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

124. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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1 125. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
3 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3,
4 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits
5 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
6 Code sections not found in section 2699.5, including sections 246, 516, 1182.12, and 2810.5.

7 126. Defendants’ conduct, as alleged herein, violates numerous sections of the
8 California Labor Code, including, but not limited to, the following:

- 9 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
10 Wage Order for Defendants’ failure to compensate Plaintiff and other
11 aggrieved employees with all required overtime pay, as alleged herein;
- 12 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable
13 IWC Wage Order for Defendants’ failure to include all forms of
14 remuneration in the “regular rate” of pay as required by law for purposes
15 of paying overtime wages and/or meal and rest period premiums to
16 Plaintiff and other aggrieved employees, as alleged herein and as set forth
17 below;
- 18 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
19 and the applicable IWC Wage Order for Defendants’ failure to
20 compensate Plaintiff and other aggrieved employees with at least
21 minimum wages for all hours worked, as alleged herein;
- 22 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
23 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
24 and other aggrieved employees with meal periods, as alleged herein;
- 25 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
26 IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff
27 and other aggrieved employees to take rest periods, as alleged herein;

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- 1 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
2 IWC Wage Order for failure to provide accurate and complete wage
3 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 4 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
5 IWC Wage Order for failure to maintain payroll records, as alleged
6 herein;
- 7 (h) Violation of Labor Code section 227.3 for failure to pay Plaintiff and
8 other aggrieved employees all vested vacation time upon termination, as
9 alleged herein;
- 10 (i) Violation of Labor Code sections 201 and 202 for failure to pay all earned
11 wages upon termination, as alleged herein;
- 12 (j) Violation of Labor Code section 204 for failure to pay all earned wages
13 during employment, as alleged herein;
- 14 (k) Violation of Labor Code section 246 for failure to properly calculate the
15 sick leave paid to Plaintiff and other aggrieved employees, as set forth
16 below;
- 17 (l) Violation of Labor Code section 1198 for failure to maintain, for Plaintiff
18 and other aggrieved employees, a temperature in work areas that provided
19 reasonable comfort consistent with industry-wide standards for the nature
20 of the process and the work performed, and to take all feasible means to
21 reduce excessive heat or humidity to a degree providing reasonable
22 comfort, as set forth below; and
- 23 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
24 provide written notice of information material to Plaintiff's and other
25 aggrieved employees' employment with Defendants, as set forth below.

26 127. As stated, during the relevant time period, Defendants engaged in a company-
27 wide practice and/or policy of not paying all meal period premiums owed when compliant meal
28 periods are not provided. Because of this practice and/or policy, Plaintiff and other aggrieved

1 employees have not received premium pay for missed, late, and interrupted meal periods.
2 Alternatively, to the extent that Defendants did pay other aggrieved employees for missed, late,
3 and interrupted meal periods, Defendants did not pay other aggrieved employees at the correct
4 rate of pay for premiums because Defendants systematically failed to include all forms of
5 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
6 remuneration, in the regular rate of pay.

7 128. Defendants' failure to provide meal periods to Plaintiff and/or other aggrieved
8 employees and failure to properly calculate the rates of pay for meal period premiums based on
9 all remuneration paid is in violation of California Labor Code sections 226.7, 512(a), 516, and
10 1198, and the applicable IWC Wage Order.

11 129. As stated, as with meal periods, Defendants also have engaged in a company-
12 wide practice and/or policy of not paying all rest period premiums owed when compliant rest
13 periods are not authorized or permitted. Because of this practice and/or policy, Plaintiff and
14 other aggrieved employees have not received premium pay for all missed rest periods.
15 Alternatively, to the extent that Defendants did pay other aggrieved employees one (1)
16 additional hour of premium pay for missed rest periods, Defendants did not pay other aggrieved
17 employees at the correct rate of pay for premiums because Defendants failed to include all forms
18 of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
19 remuneration, in the regular rate of pay.

20 130. Defendants' failure to properly calculate the rates of pay for rest period premiums
21 based on all remuneration paid is in violation of California Labor Code sections 226.7, 516, and
22 1198, and the applicable IWC Wage Order.

23 131. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
24 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
25 days from the commencement of employment with paid sick days, to be accrued at least one
26 hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3)
27 days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's
28 employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid

1 sick leave by using one of two calculations: 1) “[p]aid sick time for nonexempt employees shall
2 be calculated in the same manner as the regular rate of pay for the workweek in which the
3 employee uses paid sick time, whether or not the employee actually works overtime in that
4 workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be calculated by dividing
5 the employee’s total wages, not including overtime premium pay, by the employee’s total hours
6 worked in the full pay periods of the prior 90 days of employment.”

7 132. During the relevant time period, Defendants did not pay Plaintiff and other
8 aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage,
9 Defendants paid Plaintiff and other aggrieved employees incentive pay, nondiscretionary
10 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
11 Code, Defendants failed to incorporate all remunerations, including incentive pay and/or
12 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
13 calculating the sick leave pay rate. Therefore, during times when Plaintiff and other aggrieved
14 employees took sick leave and received these other forms of pay, Defendants failed to pay all
15 sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants
16 paid Plaintiff and other aggrieved employees sick leave based on their hourly rate of pay instead
17 of their regular rate of pay. Defendants’ failure to properly calculate the sick leave rates of pay
18 based on all remuneration paid has resulted in an underpayment of sick leave benefits to other
19 aggrieved employees on a company-wide basis, in violation of Labor Code sections 246(l).

20 133. At all relevant times, California Labor Code section 1198 dictates that no
21 employer may employ an employee under conditions of labor that are prohibited by the
22 applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the
23 standard conditions of labor fixed by the commission shall be the . . . standard conditions of
24 labor for employees. The employment of any employee . . . under conditions of labor prohibited
25 by the order is unlawful.”

26 134. California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide
27 that “[t]he temperature maintained in each work area shall provide reasonable comfort
28 consistent with industrywide standards for the nature of the process and the work performed. .

1 . . If excessive heat or humidity is created by the work process, the employer shall take all
2 feasible means to reduce such excessive heat or humidity to a degree providing reasonable
3 comfort.” California law requires an employer to endeavor to provide a safe and healthy
4 workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section 6720
5 required the California Division of Occupational Safety and Health (“OSHA”) to propose an
6 indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of April 22, 2019,
7 applies its proposed regulations to “all indoor work areas where the temperature equals or
8 exceeds 82 degrees Fahrenheit when employees are present.”

9 135. Upon information and belief, Defendants violated California Labor Code section
10 1198 and California Code of Regulations, Title 8, section 11010(15), because Defendants failed
11 to maintain a temperature in work areas that provided reasonable comfort consistent with
12 industry-wide standards for the nature of the process and the work performed and failed to take
13 all feasible means to reduce excessive heat or humidity to a degree providing reasonable
14 comfort.

15 136. During the relevant time period, Plaintiff and other aggrieved employees were
16 subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82
17 degrees Fahrenheit. Defendants failed to provide Plaintiff and other aggrieved employees with
18 reasonable comfort by maintaining the indoor temperature within the range of industry
19 standards by providing adequate air conditioning, in violation of California Labor Code section
20 1198 and IWC Wage Order No. 1-2001, Section 15. For example, Plaintiff and other aggrieved
21 employees who were present on Defendants’ worksites were not provided air conditioning or
22 fans, and would be required to work indoors at 82 degrees Fahrenheit or more. Accordingly,
23 Defendants failed to maintain, in their work areas, a temperature providing reasonable comfort
24 for their employees, including Plaintiff and other aggrieved employees, in violation of
25 California Labor Code section 1198.

26 137. At all relevant times herein, California’s Wage Theft Prevention Act was enacted
27 to ensure that employers provide employees with basic information material to their
28 employment relationship at the time of hiring, and to ensure that employees are given written

1 and timely notice of any changes to basic information material to their employment. Codified
2 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
3 time of hiring, an employer must provide written notice to employees containing basic and
4 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
5 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
6 any rates for overtime, the regular payday designated by the employer, and any allowances
7 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
8 § 2810.5(a)(1)(A)-(C).

9 138. At all relevant times, on information and belief, Defendants failed, on a
10 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
11 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants’
12 failure to provide Plaintiff and other aggrieved employees with written notice of basic
13 information regarding their employment with Defendants is in violation of Labor Code section
14 2810.5.

15 139. Thus, Plaintiff and other aggrieved employees are entitled to recover civil
16 penalties pursuant to Labor Code sections 248.5, 558, and/or 2699(a), (f), and (g).

17 **TENTH CAUSE OF ACTION**

18 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

19 **Unlawful Business Practices**

20 **(Against all Defendants)**

21 140. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 141. Defendants are “persons” as defined by California Business & Professions Code
24 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
25 associations.

26 142. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
27 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
28 suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices.

1 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
2 Code of Civil Procedure section 1021.5.

3 143. Defendants' activities, as alleged herein, are violations of California law, and
4 constitute unlawful business acts and practices in violation of California Business & Professions
5 Code sections 17200, *et seq.*

6 144. A violation of California Business & Professions Code sections 17200, *et seq.*
7 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
8 policies and practices have violated state law in at least the following respects:

- 9 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
10 class members, to work overtime without paying them proper
11 compensation in violation of California Labor Code sections 510 and
12 1198, and the applicable IWC Wage Order, as alleged herein;
- 13 (b) Failing to include all forms of remuneration in the "regular rate" of pay
14 as required by law for purposes of paying overtime wages and/or meal
15 and rest period premiums to Plaintiff and class members, in violation of
16 California Labor Code sections 226.7, 510, and 1198, and the applicable
17 IWC Wage Order, as alleged herein;
- 18 (c) Failing to pay at least minimum wage to Plaintiff and class members in
19 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
20 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 21 (d) Failing to provide all meal periods to Plaintiff and class members in
22 violation of California Labor Code sections 226.7, 512(a), 516, and 1198,
23 and the applicable IWC Wage Order, as alleged herein;
- 24 (e) Failing to authorize and permit Plaintiff and class members to take all rest
25 periods in violation of California Labor Code sections 226.7, 516, and
26 1198, and the applicable IWC Wage Order, as alleged herein;
- 27 (f) Failing to provide Plaintiff and class members with accurate wage
28 statements and failing to maintain accurate payroll records in violation of

California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(g) Failing to pay all vested vacation wages to Plaintiff and class members upon termination in violation of California Labor Code section 227.3, as alleged herein;

(h) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;

(i) Failing to properly calculate the sick leave paid to Plaintiff and class members in violation of Labor Code section 246(l), as set forth below; and

(j) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

145. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

146. During the relevant time period, on information and belief, Defendants did not pay Plaintiff and class members the correct sick leave rates of pay. In addition to an hourly

1 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
2 and/or other forms of remuneration. However, in violation of the California Labor Code,
3 Defendants failed to incorporate all remunerations, including incentive pay, nondiscretionary
4 and/or bonuses, into the calculation of the regular rate of pay for purposes of calculating the
5 sick leave rate. Therefore, during times when Plaintiff and class members took sick leave and
6 received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a
7 lower sick leave rate than required. Specifically, Defendants paid Plaintiff and class members
8 sick leave based on their hourly rate of pay instead of their regular rate of pay.

9 147. Defendants' failure to properly calculate the sick leave rates of pay based on all
10 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class
11 members on a company-wide basis, in violation of Labor Code section 246(l).

12 148. At all relevant times herein, California's Wage Theft Prevention Act was enacted
13 to ensure that employers provide employees with basic information material to their
14 employment relationship at the time of hiring, and to ensure that employees are given written
15 and timely notice of any changes to basic information material to their employment. Codified
16 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
17 time of hiring, an employer must provide written notice to employees containing basic and
18 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
19 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
20 any rates for overtime, the regular payday designated by the employer, and any allowances
21 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
22 § 2810.5(a)(1)(A)-(C).

23 149. At all relevant times, on information and belief, Defendants failed, on a
24 company-wide basis, to provide written notice to Plaintiff and class members that lists the
25 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
26 to provide Plaintiff and class members with written notice of basic information regarding their
27 employment with Defendants is in violation of California Labor Code section 2810.5.

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150. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

151. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

152. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

153. Defendants are “persons” as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

154. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

155. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and

1 secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
2 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
3 class members as part of their employment with Defendants, and thus Defendants’ practice
4 and/or policy of denying these statutory benefits constitutes an unfair business practice in
5 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

6 156. A violation of California Business & Professions Code sections 17200, *et seq.*
7 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
8 practices have violated the spirit of California’s meal and rest period laws and constitute acts
9 against the public policy behind these laws.

10 157. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
11 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
12 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
13 commences four years prior to the filing of this complaint; a permanent injunction requiring
14 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
15 members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section
16 1021.5 and other applicable laws; and an award of costs.

17 **REQUEST FOR JURY TRIAL**

18 Plaintiff requests a trial by jury.

19 **PRAYER FOR RELIEF**

20 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
21 Defendants, jointly and severally, as follows:

22 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
23 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
24 reserves the right to amend his prayer for relief to seek a different amount.

25 **Class Certification**

- 26 2. That this case be certified as a class action;
- 27 3. That Plaintiff be appointed as the representative of the Class and Subclass;
- 28 4. That counsel for Plaintiff be appointed as class counsel.

1 **As to the First Cause of Action**

2 5. That the Court declare, adjudge, and decree that Defendants violated California
3 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
4 pay all overtime wages due to Plaintiff and class members;

5 6. For general unpaid wages at overtime wage rates and such general and special
6 damages as may be appropriate;

7 7. For pre-judgment interest on any unpaid overtime compensation commencing
8 from the date such amounts were due, or as otherwise provided by law;

9 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
10 California Labor Code section 1194(a); and

11 9. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Second Cause of Action**

14 10. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
16 Order by willfully failing to pay minimum wages to Plaintiff and class members;

17 11. For general unpaid wages and such general and special damages as may be
18 appropriate;

19 12. For pre-judgment interest on any unpaid compensation from the date such
20 amounts were due, or as otherwise provided by law;

21 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
22 California Labor Code section 1194(a);

23 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

24 15. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Third Cause of Action**

27 16. That the Court declare, adjudge, and decree that Defendants violated California
28 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by

1 willfully failing to provide all meal periods to Plaintiff and class members;

2 17. That the Court make an award to the Plaintiff and class members of one (1) hour
3 of pay at each employee's regular rate of pay for each workday that a meal period was not
4 provided;

5 18. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 19. For premiums pursuant to California Labor Code section 226.7(c);

8 20. For pre-judgment interest on any unpaid meal period premiums from the date
9 such amounts were due, or as otherwise provided by law;

10 21. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 22. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Fourth Cause of Action**

15 23. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
17 failing to authorize and permit Plaintiff and class members to take all rest periods;

18 24. That the Court make an award to the Plaintiff and class members of one (1) hour
19 of pay at each employee's regular rate of pay for each workday that a rest period was not
20 authorized and permitted;

21 25. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 26. For premiums pursuant to California Labor Code section 226.7(c);

24 27. For pre-judgment interest on any unpaid rest period premiums from the date such
25 amounts were due, or as otherwise provided by law;

26 28. For attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5, or as otherwise provided by law; and

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29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 227.3 by willfully failing to pay vested vacation wages owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For prejudgment interest on any unpaid wages from the date of such amounts were due, or as otherwise provided by law;

39. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

40. For such other and further relief as the Court may deem equitable and appropriate;

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1 52. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Ninth Cause of Action**

4 53. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
6 510, 511, and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by
7 failing to include all forms of remuneration in the regular rate of pay for purposes of paying
8 overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198
9 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198
10 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
11 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and
12 maintain accurate payroll records); 227.3 (by failing to pay all vested vacation days upon
13 termination); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by
14 failing to timely pay all earned wages during employment); 246 (by failing to properly calculate
15 sick leave pay); 1198 (by failing to maintain a temperature in work areas that provide reasonable
16 comfort); and 2810.5 (by failing to provide notice of material terms of employment);

17 54. For civil penalties pursuant to the California Labor Code, including sections 210,
18 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
19 sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 511, 512(a), 516, 1174(d), 1182.12,
20 1194, 1197, 1197.1, 1198, and 2810.5;

21 55. For attorneys' fees and costs pursuant to California Labor Code section
22 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
23 Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 511, 512(a), 516, 1174(d),
24 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5;

25 56. For pre-judgment and post-judgment interest as provided by law; and

26 57. For such other and further relief as the Court may deem equitable and
27 appropriate.

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1 17200, *et seq.*;

2 64. For restitution of the statutory benefits under section 226.7 unfairly withheld
3 from Plaintiff and class members and prejudgment interest from the day such amounts were due
4 and payable;

5 65. For the appointment of a receiver to receive, manage, and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code sections 17200,
8 *et seq.*;

9 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure section 1021.5;

11 67. For pre-judgment and post-judgment interest as provided by law; and For such
12 other and further relief as the Court may deem equitable and appropriate.

13
14 Dated: November 13, 2023,

Respectfully submitted,

Capstone Law APC

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17 By:



Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

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19 Attorneys for Plaintiff Yobani Beltran-Gutierrez
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EXHIBIT “1”



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ALEXANDER LIMA
310.712.8154 Direct
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September 6, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Yobani Beltran-Gutierrez v. Steele Enterprises, Inc., et al.*

Dear PAGA Administrator:

This office represents Yobani Beltran-Gutierrez in connection with his claims under the California Labor Code. Mr. Beltran-Gutierrez was an employee of STEELE ENTERPRISES, INC. and/or A. L. GILBERT COMPANY. For the purpose of this letter, Mr. Beltran-Gutierrez collectively refers to these entities as "STEELE."

The employers may be contacted directly at the addresses below:

STEELE ENTERPRISES, INC.
304 N YOSEMITE AVENUE
OAKDALE, CA 95361

A. L. GILBERT COMPANY
304 N. YOSEMITE AVE
OAKDALE, CA 95361

Mr. Beltran-Gutierrez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Beltran-Gutierrez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by STEELE as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

STEELE employed Mr. Beltran-Gutierrez as an hourly paid, non-exempt employee from approximately September 2020 to March 2023. Mr. Beltran-Gutierrez worked for STEELE as a Forklift Driver/Order Selector at its facility in Ceres, California. During his employment, Mr. Beltran-Gutierrez typically worked ten hours or more per day and five (5) days per week. At the time his employment ended, Mr. Beltran-Gutierrez was compensated approximately \$18.99 per hour. Mr. Beltran-Gutierrez's job duties included, without limitation, operating forklifts, selecting products for order fulfillment, wrapping pallets, and delivering pallets to the shipping department.

STEELE committed one or more of the following Labor Code violations against Mr. Beltran-Gutierrez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor

Code section 2699(c):¹

STEELE's Company-Wide and Uniform Payroll and HR Practices

STEELE ENTERPRISES, INC. and A. L. GILBERT COMPANY are California corporations. Together, they are one of the oldest and largest feed milling companies in California's central valley, and formulate, manufacture, and distribute feed for all breeds of animals. Upon information and belief, STEELE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Oakdale, California, for all non-exempt, hourly paid employees working for STEELE in California, including Mr. Beltran-Gutierrez and other aggrieved employees. At all relevant times, STEELE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Beltran-Gutierrez and other aggrieved employees, regardless of their location or position.

Upon information and belief, STEELE maintains a centralized Payroll department at its corporate headquarters in Oakdale, California, which processes payroll for all non-exempt, hourly paid employees working for STEELE in California, including Mr. Beltran-Gutierrez and other aggrieved employees. Further, STEELE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Beltran-Gutierrez and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, STEELE utilized the same methods and formulas when calculating wages due to Mr. Beltran-Gutierrez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

STEELE willfully failed to pay all overtime wages owed to Mr. Beltran-Gutierrez and other aggrieved employees. During the relevant time period, Mr. Beltran-Gutierrez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, STEELE had, and continues to have, a company-wide policy and/or practice of requiring Mr. Beltran-Gutierrez and other aggrieved employees to perform work off-the-clock before their shifts, such as attending mandatory meetings. For example, at least 2-3 times per month,

¹ These facts, theories, and claims are based on Mr. Beltran-Gutierrez's experience and counsel's review of those records currently available relating to Mr. Beltran-Gutierrez's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Beltran-Gutierrez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

before he was permitted to clock in for his scheduled shift, Mr. Beltran-Gutierrez was required to attend meetings held by STEELE's managers to discuss work-related matters, such as safety protocols or production expectations, which could take up to 15 minutes per instance. Thus, STEELE required Mr. Beltran-Gutierrez and other aggrieved employees to work off-the-clock and did not compensate them for this time worked.

Second, during the relevant time period, STEELE had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while assigning heavy workloads, including meeting order fulfillment deadlines and productivity expectations, resulting in a failure to provide Mr. Beltran-Gutierrez and other aggrieved employees with adequate meal period coverage. STEELE also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Beltran-Gutierrez and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Beltran-Gutierrez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, Mr. Beltran-Gutierrez and other aggrieved employees were required to discuss work-related matters with supervisors and management during unpaid meal periods. For example, due to the lack of coverage, Mr. Beltran-Gutierrez's meal periods were interrupted by STEELE's supervisors who wanted to discuss work-related issues, such as forklift safety, and which often required Mr. Beltran-Gutierrez to return to work immediately to assess an urgent situation. Thus, Mr. Beltran-Gutierrez and other aggrieved employees missed meal periods and/or had them interrupted to handle their assigned workloads and responsibilities, and STEELE did not pay Mr. Beltran-Gutierrez and other aggrieved employees for the time they continued to perform tasks during meal periods.

Third, on information and belief, because STEELE frowned upon employees accruing meal period penalties, STEELE's managers adjusted Mr. Beltran-Gutierrez's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Moreover, STEELE's company-wide timekeeping system prevented Mr. Beltran-Gutierrez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Beltran-Gutierrez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, STEELE did not record all hours worked during meal periods and Mr. Beltran-Gutierrez and other aggrieved employees performed work during meal periods for which they were not paid.

STEELE knew or should have known that as a result of these company-wide practices and/or policies, Mr. Beltran-Gutierrez and other aggrieved employees were performing assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Beltran-Gutierrez and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Beltran-Gutierrez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, STEELE did not pay Mr. Beltran-Gutierrez and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, STEELE paid Mr. Beltran-Gutierrez and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, STEELE failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Beltran-Gutierrez and other aggrieved employees worked overtime and received these other forms of pay, STEELE failed to pay all

overtime wages by paying a lower overtime rate than required.

For example, STEELE paid Mr. Beltran-Gutierrez and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Beltran-Gutierrez's and other aggrieved employees' wage statements as "Bonus." During pay periods that Mr. Beltran-Gutierrez and other aggrieved employees were paid overtime wages, STEELE did not incorporate these payments into Mr. Beltran-Gutierrez's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, STEELE paid Mr. Beltran-Gutierrez and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. STEELE's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Beltran-Gutierrez and other aggrieved employees on a company-wide basis.

STEELE's failure to pay Mr. Beltran-Gutierrez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, STEELE had a company-wide policy and/or practice requiring Mr. Beltran-Gutierrez and other aggrieved employees to perform work while off-the-clock before their shifts, including attending meetings with managers or supervisors. STEELE failed to track this time Mr. Beltran-Gutierrez and other aggrieved employees spent working off-the-clock, and Mr. Beltran-Gutierrez and other aggrieved employees received no compensation for this time.

As also stated, due to STEELE's policies and/or practices of understaffing its facilities while assigning heavy workloads, failing to schedule meal periods, and requiring employees to attend meetings during unpaid meal periods, Mr. Beltran-Gutierrez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. As a result, Mr. Beltran-Gutierrez and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. STEELE did not pay Mr. Beltran-Gutierrez and other aggrieved employees for the time they continued to perform tasks during meal periods.

Further, on information and belief, because STEELE frowned upon employees accruing meal period penalties, STEELE's managers adjusted Mr. Beltran-Gutierrez's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Moreover, STEELE's company-wide timekeeping system prevented Mr. Beltran-Gutierrez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Beltran-Gutierrez and other aggrieved employees once

they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, STEELE did not record all hours worked during meal periods and Mr. Beltran-Gutierrez and other aggrieved employees performed work during meal periods for which they were not paid.

Thus, STEELE did not pay at least minimum wages for all hours worked by Mr. Beltran-Gutierrez and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, STEELE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, STEELE regularly failed to pay at least minimum wages to Mr. Beltran-Gutierrez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, STEELE had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Beltran-Gutierrez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, STEELE had company-wide practices and/or policies of failing to schedule meal periods, which further caused Mr. Beltran-Gutierrez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

STEELE's practices and policies prevented Mr. Beltran-Gutierrez and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Beltran-Gutierrez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, according to Mr. Beltran-Gutierrez's time records, on February 11, 2023, he clocked in at the start of his shift at 4:02 a.m. and clocked out at the end of his shift at 9:04 a.m., working a total of five (5) hours and two (2) minutes (or 5.03 hours), without clocking out for a meal period; on September 24, 2022, he clocked in at the start of his shift at 3:53 a.m. and clocked out at the end of his shift at 9:02 a.m., working

a total of five (5) hours and nine (9) minutes (or 5.15 hours), without clocking out for a meal period; and on August 20, 2022, he clocked in at the start of his shift at 3:56 a.m. and clocked out at the end of his shift at 9:03 a.m., working a total of five (5) hours and seven (7) minutes (or 5.12 hours), without clocking out for a meal period. Further, as examples of late meal periods, according to Mr. Beltran-Gutierrez's time records, on March 2, 2023, he clocked in at the start of his shift at 5:33 a.m. and clocked out for his meal period at 10:45 a.m., working a total of five (5) hours and 12 minutes (or 5.20 hours), before he was able to take his meal period; on February 7, 2023, he clocked in at the start of his shift at 4:01 a.m. and clocked out for his meal period at 9:03 a.m., working a total of five (5) hours and two (2) minutes (or 5.03 hours), before he was able to take his meal period; and on January 26, 2023, he clocked in at the start of his shift at 4:02 a.m. and clocked out for his meal period at 9:05 a.m., working a total of five (5) hours and three (3) minutes (or 5.05 hours), before he was able to take his meal period.

Additionally, as stated, on information and belief, because STEELE frowned upon employees accruing meal period penalties, STEELE's management adjusted Mr. Beltran-Gutierrez's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Also, as stated, STEELE's company-wide timekeeping system prevented Mr. Beltran-Gutierrez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Beltran-Gutierrez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Further, STEELE did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Beltran-Gutierrez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

STEELE knew or should have known that as a result of its company-wide policies and/or practices, Mr. Beltran-Gutierrez and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. STEELE further knew or should have known that it did not pay Mr. Beltran-Gutierrez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, STEELE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Beltran-Gutierrez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that STEELE did pay other aggrieved employees for missed, late, and interrupted meal periods, STEELE did not pay other aggrieved employees at the correct rate of pay for premiums because STEELE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when other aggrieved employees received meal period premiums and these other forms of pay, STEELE failed to pay full meal period premiums by paying a lower rate than required.

Accordingly, STEELE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, STEELE regularly failed to authorize and permit Mr. Beltran-Gutierrez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, STEELE's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Beltran-Gutierrez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, STEELE failed to schedule rest periods, which, coupled with STEELE's failure to provide adequate rest period coverage, further led to Mr. Beltran-Gutierrez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, STEELE maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Beltran-Gutierrez and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Beltran-Gutierrez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, STEELE effectively maintained control over Mr. Beltran-Gutierrez and other aggrieved employees during rest periods.

As a result of STEELE's practices and policies, Mr. Beltran-Gutierrez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Beltran-Gutierrez had his rest periods interrupted by supervisors to discuss work-related matters and attend to urgent issues because of the lack of coverage and STEELE's failure to schedule rest periods for employees.

STEELE also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Beltran-Gutierrez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that STEELE did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, STEELE did not pay other aggrieved employees at the correct rate of pay for premiums because STEELE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, STEELE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Beltran-Gutierrez and other aggrieved employees are entitled to

recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. STEELE has not provided Mr. Beltran-Gutierrez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, STEELE has knowingly and intentionally provided Mr. Beltran-Gutierrez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, STEELE issued uniform wage statements to Mr. Beltran-Gutierrez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, STEELE violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because STEELE did not record the time Mr. Beltran-Gutierrez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), STEELE did not list the correct amount of gross wages and net wages earned by Mr. Beltran-Gutierrez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, STEELE failed to accurately list the total number of hours worked by Mr. Beltran-Gutierrez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because STEELE did not calculate Mr. Beltran-Gutierrez's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, STEELE did not list the correct amount of gross wages earned by Mr. Beltran-Gutierrez and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Mr. Beltran-Gutierrez and other aggrieved employees in violation of section 226(a)(5). STEELE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

Third, and separate from these violations, STEELE issued uniform wage statements to Mr. Beltran-Gutierrez and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative

claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Beltran-Gutierrez's and other aggrieved employees' wage statements incorrectly list the employer's address as "4319 Jessup Road Ceres CA 95307," but, according to the California Secretary of State's website, STEELE's address should be "304 N YOSEMITE AVENUE OAKDALE, CA 95361." See example paystub below.

STEELE ENTERPRISES INC • 4319 Jessup Road • Ceres CA 95307 • (209) 634-8522

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), STEELE willfully failed to maintain accurate payroll records for Mr. Beltran-Gutierrez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, STEELE engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Beltran-Gutierrez and other aggrieved employees, in violation of section 1198. Furthermore, in light of STEELE's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, STEELE kept no records of meal start and end times for second meal periods.

Because STEELE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Beltran-Gutierrez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Beltran-Gutierrez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, STEELE had a company-wide policy and practice of failing to pay Mr. Beltran-Gutierrez and other aggrieved employees vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. For example, Mr. Beltran-Gutierrez had earned vested vacation pay until his employment with STEELE ended on or about March 24, 2023. However, STEELE did not pay Mr. Beltran-Gutierrez the balance of his accrued and unused vacation wages at the end of his employment. STEELE's failure to pay Mr. Beltran-Gutierrez and other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, STEELE failed to pay Mr. Beltran-Gutierrez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an

employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, STEELE willfully failed to pay Mr. Beltran-Gutierrez and other aggrieved employees who are no longer employed by STEELE all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or vested vacation wages, either at the time of discharge, or within seventy-two (72) hours of their leaving STEELE's employ.

Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, STEELE did not pay Mr. Beltran-Gutierrez and other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, STEELE paid Mr. Beltran-Gutierrez and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, STEELE failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Beltran-Gutierrez and other aggrieved employees took sick leave and received these other forms of pay, STEELE failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, STEELE paid Mr. Beltran-Gutierrez and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

STEELE's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Beltran-Gutierrez and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198

further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. . . . If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.” California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section 6720 required the California Division of Occupational Safety and Health (“OSHA”) to propose an indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of April 22, 2019, applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

Upon information and belief, STEELE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15), because STEELE failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

During the relevant time period, Mr. Beltran-Gutierrez and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit. STEELE failed to provide Mr. Beltran-Gutierrez and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and IWC Wage Order 1-2001, Section 15. For example, Mr. Beltran-Gutierrez and other aggrieved employees who were present on STEELE’s worksites were not provided air conditioning or fans, and would be required to work indoors at 82 degrees Fahrenheit or more. Accordingly, STEELE failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, including Mr. Beltran-Gutierrez and other aggrieved employees, in violation of California Labor Code section 1198.

Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

STEELE failed to provide Mr. Beltran-Gutierrez and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). STEELE's failure to provide Mr. Beltran-Gutierrez and other aggrieved employees with written notice of basic information regarding their employment with STEELE is in violation of Labor Code section 2810.5.

Mr. Beltran-Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny 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. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." STEELE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Beltran-Gutierrez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Beltran-Gutierrez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Beltran-Gutierrez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against STEELE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Beltran-Gutierrez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a long, sweeping horizontal stroke extending to the right.

Alexander Lima

Copy: STEELE ENTERPRISES, INC. (via U.S. Certified Mail); A. L. GILBERT COMPANY (via U.S. Certified Mail)

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **November 13, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

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☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

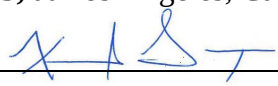
☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **November 13, 2023**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name



Signature