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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUN 06 2024


BY: Amaris Morales Eumana, Deputy

Attorneys for Plaintiff THOMAS GOMEZ, and
All others similarly situated.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO
SAN BERNARDINO JUSTICE CENTER

THOMAS GOMEZ on behalf of himself and on
behalf of all others similarly situated,

PLAINTIFFS,

vs.

LASSONDE PAPPAS AND COMPANY INC.,
a California Corporation; and DOES 1 to 50
inclusive,

DEFENDANTS.

Case No.: CIVSB2407087

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

1. FAILURE TO PAY ALL OVERTIME
AND DOUBLE TIME WAGES;
2. FAILURE TO PAY WAGES WHEN
DUE;
3. FAILURE TO PAY ALL WAGES AT
SEPARATION;
4. FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS;
5. FAILURE TO PROVIDE MEAL
PERIODS;
6. FAILURE TO PROVIDE REST
BREAKS;
7. FAILURE TO REIMBURSE;
8. UNFAIR COMPETITION; and
9. CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEYS
GENERAL ACT (PAGA).

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

1 **I. INTRODUCTION**

2 1. This action is brought by Plaintiff THOMAS GOMEZ and similarly aggrieved
3 employees ("Plaintiff and the aggrieved employees" or "Mr. Gomez") on behalf of themselves and
4 the people of the State of California and as an "aggrieved employee" acting as private attorney
5 general under the Private Attorneys General Act of 2004, § 2699, et seq. ("PAGA") against
6 LASSONDE PAPPAS AND COMPANY INC; and DOES 1 to 50 inclusive, ("Defendants"),
7 alleging, among other things violations of the California Labor Code and Unfair Competition Law.
8 Plaintiff seeks on behalf of himself and all others similarly situated aggrieved employees, damages,
9 attorneys' fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges, as
10 follows:

11 **II. GENERAL ALLEGATIONS**

12 2. This class action arises from wage and hour violations for, among other things,
13 Defendants failure to compensate its California hourly non-exempt employees in compliance with
14 California law. As more fully described herein, Defendants failed and continue to fail to compensate
15 Plaintiff and class members the full amount of daily overtime pay based on all overtime hours
16 worked, overtime and double time premiums based on the correct regular rate of pay, all wages when
17 due, all wages at time of separation, and minimum wage for all hours worked; Defendants failed and
18 continue to fail to provide accurate, itemized wage statements, reimburse employees for costs
19 including but not limited to cell phone bills, cleaning of work clothes, mileage, gas, and travel,
20 provide legally compliant paid rest breaks, provide legally compliant meal breaks, and engage in
21 other Labor Code violations and violations of the applicable Industrial Welfare Commissions Wage
22 Order.

23 3. This Court is the proper court, and this action is properly filed in San Bernardino
24 County and in this judicial district because Defendant does business in San Bernardino County and
25 has their business located in San Bernardino County.

26 4. Plaintiff seeks among other things, all wages, restitutionary disgorgement, and
27 statutory penalties. Plaintiff seeks to represent the following Class:

28 5. All current and former California hourly non-exempt employees of Defendants for

1 the period of July 5, 2022 through the date of class certification who worked at one of Defendants'
2 juice manufacturing facilities, including those who were batchers ("the Class").

3 6. This Court is the proper court, and this action is properly filed in San Bernardino and
4 in this judicial district because Defendants do business in San Bernardino and because Defendants'
5 obligations and liability arise therein.

6 7. Plaintiff is a former hourly non-exempt employee for Defendants and a resident of
7 the County of San Bernardino, State of California.

8 8. Plaintiff is informed and believes, and thereon alleges that Defendants, each, are
9 either a California corporation or a California Limited Liability Company.

10 9. Plaintiff is informed and believes and thereon alleges that each and all of the acts and
11 omissions alleged herein were performed by and or are attributable to all Defendants each acting as
12 agents and or employees and or under the direction and control of each of the other Defendants and
13 that said acts and failures to act were within the course and scope of said agency employment and or
14 direction and control Plaintiff is informed and believes and thereon alleges that at all times material
15 hereto Defendants were and are the agents of each other.

16 10. The true names and capacities whether individual corporate associate or otherwise of
17 DOES 1 through 50 are unknown to Plaintiff who therefore sues the DOE Defendants by fictitious
18 names Plaintiff will amend this Complaint to show their true names and capacities when they have
19 been ascertained.

20 11. Plaintiff and Class members are informed and believe, and thereon allege that Entity
21 Defendants and DOES 1 - 50 were also engaged in a single enterprise in which each said Defendants
22 contributed skill, effort, knowledge, and/or money to achieve a common purpose of maximizing the
23 profits of the single enterprise. That DOES 1 - 50 are the partners owners, shareholders, managers,
24 joint employers, or alter egos of Defendant Employers and were acting on behalf of defendant
25 employers at all relevant times alleged here in.

26 12. California courts have recognized that the definition of "employer" for purposes of
27 enforcement of the California Labor Code goes beyond the concept of traditional employment to
28 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of

1 California's labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who directly
2 or indirectly, or through an agent or any other person, engages, suffers, or permits any person to
3 work or exercises control over the wages, hours, or working conditions of any person, may be liable
4 for violations of the California Labor Code as to that person. Cal. Labor Code §§558 and 558.1.

5 13. At all relevant times alleged herein Plaintiff was employed by Defendants, and
6 Plaintiff held a position with Defendants in San Bernardino, State of California.

7
8 **III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

9 14. Plaintiff was employed by LASSONDE PAPPAS AND COMPANY INC and
10 recently as a batcher from on or around July 5, 2022 to July 13, 2023.

11 15. Plaintiff was a non-exempt employee with a starting hourly rate of \$23.00.

12 16. His duties included making and preparing juice, putting juice into batch tanks,
13 opening and moving barrels, conducting quality checks after finished products in compliance with
14 law, and dumping batch bags into tanks to make juice.

15 17. As there were 100 bags per batch with each bag weighing 50 pounds each, Plaintiff
16 would lift about 10 batches per 12-hour shift.

17 18. Twelve-hour shifts were common: about 10-12 days a month Mr. Gomez worked
18 longer than 12 hours.

19 19. Plaintiff and the aggrieved regularly worked 12-hour shifts and were completely
20 denied their second meal period to which they were entitled under Labor Code § 512 and Wage
21 Order § 11.

22 20. Plaintiff and Class members were scheduled to work seven days in a row and for more
23 than eight hours on the seventh day. Unfortunately, Defendants refused to pay Plaintiff and Class
24 members twice their regular rate for work done in excess of eight hours on the seventh day of
25 consecutive work.

26 21. Throughout his employment with Defendants, Plaintiff and Class members regularly
27 worked shifts that were longer than 5 hours.

28 22. Plaintiff and Class members have been denied an uninterrupted 30-minute meal break

1 during shifts longer than five hours.

2 23. Throughout his employment with Defendants, Plaintiff and Class members regularly
3 worked shifts that were longer than 8 hours.

4 24. Plaintiff and Class members have been denied overtime payment for hours worked in
5 excess of 8 hours per day and forty hours per week.

6 25. Defendants denied meal breaks to Plaintiff and Class members including but not
7 limited to denying compliant meal breaks on the following dates:
8 7/6/2022;7/7/2022;7/9/2022;8/3/2022;8/12/2022;8/15/2022;9/5/2022;9/6/2022;9/15/2022;10/8/202
9 2;10/17/2022;10/21/2022;11/8/2022;11/15/2022;11/18/2022;11/30/2022;12/6/2022;12/14/2022;12/
10 19/2022;12/23/2022;12/26/2022;12/29/2022.

11 26. Defendants denied rest periods to Plaintiff and Class members.

12 27. Defendants denied second meal breaks to Plaintiff and Class members including but
13 not limited to denying second meals on the following dates:
14 7/6/2022;7/9/2022;7/23/2022;7/24/2022;7/25/2022;7/26/2022;7/27/2022;7/28/2022;7/30/2022;7/31
15 /2022;8/2/2022;8/4/2022;8/6/2022;8/7/2022;8/10/2022;8/12/2022;8/14/2022;8/15/2022;8/16/2022;
16 8/17/2022;8/18/2022;8/19/2022;8/20/2022;8/23/2022;8/24/2022;8/25/2022;8/29/2022;8/30/2022;8/
17 31/2022;9/1/2022;9/5/2022;9/6/2022;9/7/2022;9/8/2022;9/14/2022;9/15/2022;9/21/2022;9/22/2022
18 ;9/23/2022;9/24/2022;9/25/2022;9/27/2022;9/28/2022;9/29/2022;10/1/2022;10/2/2022;10/4/2022;1
19 0/5/2022;10/6/2022;10/8/2022;10/12/2022;10/13/2022;10/14/2022;10/17/2022;10/18/2022;10/19/2
20 022;10/20/2022;10/21/2022;10/24/2022;10/25/2022;10/26/2022;10/27/2022;11/10/2022;11/17/202
21 2;11/28/2022;12/6/2022;12/9/2022;12/21/2022;12/22/2022;12/23/2022;12/26/2022;1/6/2023;1/13/
22 2023.

23 28. Defendants have consistently failed to pay on time and in full.

24 29. Defendants never paid Plaintiff and Class members and other employees for overtime
25 worked at the regular rate.

26 30. Plaintiff and Class members were not reimbursed for costs including but not limited
27 to cell phone bills, cleaning of work clothes, mileage, gas, and travel.

28 31. Defendants failed to pay overtime in Violation of California Labor Code §§ 510 and

1 1198. Defendant failed to pay minimum wage in Violation of California Labor Code §§ 1181.12,
2 1194, 1194.2 and 1197. Defendants failed to pay the final paycheck on time as required under Labor
3 Code §§ 201, 203, 218.5 and 1194. Defendants failed to provide accurate, itemized wage statements
4 in Violation of California Labor Code § 226 and Wage Order No. 1-2001 § 7. Defendants failed to
5 pay employees all hours worked in Violation of California Labor Code § 203 and 29 C.F.R. §§
6 785.15 and 785.16.

7 32. Defendants' conduct, as alleged herein, has caused Plaintiff and Class members
8 damages including, but not limited to, loss of wages and compensation.

9 33. Accordingly, Plaintiff and the Class worked as hourly non-exempt employees in the
10 state of California for Defendants.

11 34. Throughout the period of July 5, 2022 through the date of class certification ("Class
12 Period"), Plaintiff and all Class members were and are employees of Defendants, entitled to all of
13 the protections afforded to employees under the Labor Code and applicable IWC Wage Orders.

14 35. Defendants' primary business is manufacturing and distributing food products,
15 including juice or juice products. Defendants' work is performed in part by Plaintiff and the Class
16 members.

17 36. During the relevant time period, Plaintiff and the Class members worked in excess of
18 eight (8) hours in a workday and in excess of forty (40) hours in a workweek.

19 37. During the relevant time period, Defendants failed to pay Plaintiff and Class members
20 the full amount of minimum wages for all hours worked, the full amount of overtime and double
21 time wages for all overtime and double time hours worked.

22 38. During the relevant time period, Defendants failed to pay Plaintiff and Class members
23 the full amount of overtime and double time wages based on their correct regular rate of pay. When
24 Class members worked shifts over eight (8) hours per day, or workweeks over forty (40) hours per
25 week, Defendants did not pay them daily and weekly overtime pay in accordance with the California
26 Labor Code and applicable Wage Order. This includes but is not limited to Defendants' failure to
27 pay Plaintiff and the Class members for work time spent, including but not limited to, making and
28 preparing juice, putting juice into batch tanks, opening and moving barrels, conducting quality

1 checks after finished products in compliance with law, and dumping batch bags into tanks to make
2 juice.

3 39. Defendants conduct, as alleged herein, has caused Plaintiff and Class members
4 damages including, but not limited to, loss of wages and compensation.

5 40. Defendants are liable to Plaintiff and the Class for failing to pay overtime and double
6 time wages for all hours worked based on the regular rate of pay, failing to provide legally compliant
7 meal and rest periods, and failure to pay all wages owed upon termination, and unfair competition.

8 41. Plaintiff is a member of and seeks to be the representative for the Class of similarly
9 situated employees who all have been exposed to have suffered and or were permitted to work under
10 Defendant s unlawful employment practices as alleged herein.

11 42. Despite knowing that Plaintiff and the Class were working Defendants refused to pay
12 minimum wages and the full amount of overtime premiums for all overtime hours worked.

13 43. Throughout the Class Period Defendants failed to authorize and permit legally
14 compliant meal breaks Plaintiff and Class members were assigned to and required to regularly
15 worked 12-hour shifts and were completely denied their second meal period to which they were
16 entitled under Labor Code § 512 and Wage Order § 11.

17 44. Plaintiff and Class members were scheduled to work seven days in a row and for more
18 than eight hours on the seventh day. Unfortunately, Defendants refused to pay Plaintiff and Class
19 members twice their regular rate for work done in excess of eight hours on the seventh day of
20 consecutive work. Throughout his employment with Defendants, Plaintiff and Class members
21 regularly worked shifts that were longer than 5 hours. Plaintiff and Class members have been denied
22 an uninterrupted 30-minute meal break during shifts longer than five hours.

23 45. Throughout the Class Period Defendants failed and continue to fail to pay for meal
24 period violations at the correct regular rate of pay.

25 46. Throughout the Class Period Defendants failed to authorize and provide paid rest
26 periods compliant with the provisions of the California Labor Code and applicable Wage Order
27 Plaintiff and Class members were assigned to and required to work shifts lasting over four (4) hours
28 and were not provided nor allowed to take a non-captive paid ten minute uninterrupted rest break

1 during each four (4) hour work period or major fraction thereof at the direction Defendants and or
2 with Defendants knowledge and acquiescence.

3 47. Throughout the Class Period Defendants failed and continue to fail to pay for regular
4 rest period violations at the correct regular rate of pay.

5 48. Defendants failed to pay Plaintiff and the Class all earned wages timely upon
6 termination. This includes, but is not limited to, unpaid minimum and/or overtime wages and/or meal
7 period premiums at the regular rate of pay and/or rest period premiums at the regular rate of pay.

8 49. The wage statements provided by Defendants failed to provide accurate information
9 reflecting the hours actually worked, gross wages earned, net wages earned, the name and address
10 of the legal entity that is the employer, and the applicable hourly rates at the corresponding hours
11 worked.

12 50. The underpayment of wages Labor Code violations and Wage Order violations upon
13 Plaintiff and the Class are a consequence of Defendants unlawful policies and practices, which were
14 centrally devised, implemented, communicated, and applied to Plaintiff and the Class.

15 51. Because of Defendants unlawful conduct Plaintiff and the Class have been and
16 continue to be systematically deprived of their earned wages to which they are entitled by law and
17 deprived of other benefits of the Labor Code and applicable IWC Wage Orders to the detriment of
18 himself and the public at large.

19 ///

1 **IV. CLASS DEFINITION AND CLASS ALLEGATIONS**

2 52. Plaintiff brings this action on his own behalf and on behalf of all others similarly
3 situated pursuant to California Code of Civil Procedure 382 and as a member of the Class defined as
4 follows:

5 53. All current and former California hourly non-exempt employees of Defendants for
6 the period of July 5, 2022 through the date of class certification who worked at one of Defendants
7 juice manufacturing facilities (the "Class").

8 **Sub Class 1: Overtime Class**

9 54. All current and former California hourly non-exempt employees of Defendants for
10 the period of July 5, 2022 through the date of class certification who worked at one of Defendants'
11 juice manufacturing facilities, including those who were batchers, and who worked at least one 1
12 day of more than eight 8 hours in a day or more than forty 40 hours in a week. ("Overtime Sub
13 Class").

14 **Sub Class 2: Untimely Wages**

15 55. All current and former California hourly non-exempt employees of Defendants for
16 the period of July 5, 2022 through the date of class certification who worked at one of Defendants'
17 juice manufacturing facilities, including those who were batchers, and who were not paid all wages
18 when due. ("Untimely Wages Sub Class").

19 **Sub Class 3: Off the Clock Sub Class**

20 56. July 5, 2022 through the date of class certification who worked at one of Defendants'
21 juice manufacturing facilities, including those who were batchers, and who were suffered or
22 permitted to work without compensation paid at minimum wage ("Off the Clock Sub Class").

23 **Sub Class 4: Meal Period Sub Class**

24 57. All current and former California hourly non-exempt employees of Defendants for
25 the period of July 5, 2022 through the date of class certification who worked at one of Defendants'
26 juice manufacturing facilities, including those who were batchers, and who worked at least one shift
27 of more than six 6 hours. ("Meal Period Sub Class").
28

1 **Sub Class 5: Rest Period Sub Class**

2 58. All current and former California hourly non-exempt employees of Defendants for
3 the period of July 5, 2022 through the date of class certification who worked at one of Defendants'
4 juice manufacturing facilities, including those who were batchers, and who worked at least one shift
5 of 3.5 hours or more. ("Rest Period Sub Class").

6 **Sub Class 6: Reimbursement Sub Class**

7 59. All current and former California hourly non-exempt employees of Defendants for
8 the period of July 5, 2022 through the date of class certification who worked at one of Defendants'
9 juice manufacturing facilities, including those who were batchers, and who were not reimbursed.
10 ("Reimbursement Sub Class").

11 **Sub Class 7: Pay Stub Sub Class**

12 60. All current and former California hourly non-exempt employees of Defendants for
13 the period of July 5, 2022 through the date of class certification who worked at one of Defendants'
14 juice manufacturing facilities, including those who were batchers, and who are members of Sub
15 Classes 1 or 2 or 3 or 4 or 5 or 6 and were provided a wage statement. ("Pay Stub Sub Class").

16 **Sub Class 8: Waiting Time Penalties Sub Class**

17 61. All current and former California hourly non-exempt employees of Defendants for
18 the period of July 5, 2022 through the date of class certification who worked at one of Defendants'
19 juice manufacturing facilities, including those who were batchers, and who are members of Sub
20 Classes 1 or 2 or 3. ("Waiting Time Penalties Class").

21 62. Plaintiff reserves the right to amend or otherwise alter the class definition presented
22 to the Court at an appropriate time, or to alter, propose, or eliminate sub-classes, in response to facts
23 learned through discovery, legal arguments advanced by Defendants, or otherwise.

24 63. Further, this action is being brought for the benefit of the public, who are entitled to
25 restitution of those funds improperly withheld by Defendants.

26 64. This action has been brought and may be properly maintained as a class action
27 pursuant to the provisions of Code of Civil Procedure § 382 and other applicable law.

28 65. **Numerosity:** Members of the Class are so numerous that their individual joinder is

1 impracticable. It is possible to ascertain the number of former and current employees who are
2 members of the proposed class, but they are so numerous that joinder is impracticable. The proposed
3 Class includes future employees (persons who are hired by Defendants within the class period, but
4 who are not now class members as current or former employees) whose joinder is currently
5 impossible. The precise number of Class members and their addresses can be determined by
6 Defendants' business records and will become known to Plaintiff through discovery. Class members
7 may be notified of the pendency of this action by mail, e-mail, the internet, or published and posted
8 notice.

9 66. **Typicality:** Plaintiff's claims are typical of the claims of members of the proposed
10 classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has been subjected
11 to Defendants' unlawful employment practices, as alleged in this Complaint.

12 67. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the
13 interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
14 Plaintiff has retained competent and experienced counsel. The interests of Class members will be
15 fairly and adequately protected by Plaintiff and his counsel.

16 68. **Common Question of Law and Fact:** Common questions of law and fact exist as to
17 all Class members and predominate over any questions affecting solely individual members of the
18 proposed Class:

19 a. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and
20 the members of the Class the full amount of overtime wages based on the regular rate of pay for each
21 hour in excess of eight (8) per day worked in violation of the applicable Labor Code provisions
22 including 510 and 1194;

23 b. Whether Defendants failed to pay the appropriate straight time and premium overtime
24 compensation to the non-exempt hourly employees;

25 c. Whether Defendants failed to pay the appropriate premium overtime and double time
26 compensation to Plaintiff and the Class members based on the correct regular rate of pay;

27 d. Whether Defendants failed to pay minimum wages and or overtime compensation to
28 the Class members despite the hours permitted and are suffered to actually work in violation of the

1 Labor Code and the IWC Wage Order(s);

2 e. Whether Defendants improperly retained appropriated or deprived Plaintiff and the
3 Class members of the use of monies or sums to which they were legally entitled;

4 f. Whether Defendants engaged in unfair business practices;

5 g. Whether Defendants were participants in the alleged unlawful conduct;

6 h. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff
7 and the members of the Class paid rest periods in violation of the applicable IWC Wage Order and
8 Labor Code 226 7 by requiring non captive paid rest breaks;

9 i. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff
10 and the members of the Class unpaid meal periods in violation of IWC Wage Order No 4 2001 and
11 Labor Code 226 7 512 by failing to timely provide the required number of 30-minute uninterrupted
12 meal periods to Plaintiff and Class members;

13 j. Whether Defendants engaged in unfair practice and violated California Business and
14 Professions Code 17200 by failing to compensate Plaintiff and the members of the Class their full
15 amount of overtime wages;

16 k. Whether Defendants violated Labor Code 203 by failing to pay all wages due upon
17 separation;

18 l. Whether Defendants failed to provide accurate wage statements to Plaintiff and the
19 members of the Class; and

20 m. The nature and extent of class wide injury and measure of damages for the injury.

21 69. **Superiority and Substantial Benefit:** A class action is the superior method for the
22 fair and efficiency adjudication of this controversy. Defendants implemented illegal schemes that
23 are generally applicable to the members of the proposed plaintiff class and sub-classes. Damages
24 suffered by each Class member may be relatively small given the burden and expense of individual
25 prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further, it
26 would be virtually impossible for the Class members to redress the wrongs done to them on an
27 individual basis. Even if Class members could afford such individual litigation, the court system
28 could not. By contrast, the class action device presents far fewer management difficulties, and

1 provides the benefits of a single adjudication, economies of scale, and comprehensive supervision
2 by a single court.

3 70. Plaintiff knows of no difficulty that will be encountered in the management of this
4 litigation that would preclude its maintenance as a class action. Plaintiff is informed and believes,
5 and on that basis alleges, that the amount of money due each Class member as economic damages is
6 ascertainable from Defendants' records or may readily be determined by other means.

7 71. The Classes should also be certified because:

8 a. The prosecution of separate actions by individual Class members would create a risk
9 of inconsistent or varying adjudications with respect to individual Class members, which would
10 establish incompatible standards of conduct for Defendants;

11 b. The prosecution of separate actions by individual Class members creates the risk of
12 adjudication with respect to them, which would, as a practical matter, be dispositive of the interests
13 of the other Class members not parties to the adjudications, or would substantially impair or impede
14 their ability to protect their interests; and

15 c. Defendants have acted or refused to act on grounds generally applicable to the Class,
16 and/or general public, thereby making appropriate final and injunctive relief with respect to the
17 Classes as a whole.

18 ///

1 **FIRST CAUSE OF ACTION**

2 **Failure to pay Overtime**

3 Violation of California Labor Code §§ 218.5 510 and 1198;

4 (Against all Defendants)

5 72. Plaintiff restates and incorporates by reference each and every allegation of the
6 foregoing paragraphs as though fully set forth herein.

7 73. Plaintiff and the Class members herein were and are employed and scheduled as a
8 matter of established company policy to work and in fact worked as non-exempt hourly employees
9 in excess of eight 8 hours per day and are in excess of forty 40 hours per workweek Defendants
10 employed and scheduled Plaintiff and the Class members without providing overtime compensation
11 for such excess hours worked in violation of Labor Code 510 and 1194 and the relevant California
12 Industrial Welfare Commission (IWC) orders.

13 74. Labor Code § 510 states: "Eight hours of labor constitutes a day's work. Any work in
14 excess of eight hours in one workday and any work in excess of 40 hours in any one work week and
15 the first eight hours worked on the seventh day of work in any one work week shall be compensated
16 at the rate of no less than one and one-half times the regular rate of pay."

17 75. Labor Code § 1198 states: "It is unlawful to employ person for longer than the hours
18 set by the IWC or under conditions prohibited by the applicable IWC Wage Orders." Wage Order 5-
19 2001 (WO 5-01) mandates that employers pay one and one half times the employees regular rate of
20 pay for employees who work more than eight hours in a day or forty hours in a week and two times
21 their regular rate of pay for any work in excess of twelve hours in one day.

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

1 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to
2 the affected employee. (b) If upon inspection or investigation the Labor Commissioner determines
3 that a person has paid or caused to be paid a wage for overtime work in violation of any provision of
4 this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
5 Commission, the Labor Commissioner may issue a citation. (c) The civil penalties provided for in
6 this section are in addition to any other civil or criminal penalty provided by law.

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

12 78. Pursuant to Labor Code 218 and 1194 a Plaintiff may bring a civil action for overtime
13 wages directly against the employer without first filing a claim with the Division of Labor Standards
14 Enforcement DLSE and may recover such wages together with interest thereon penalties attorneys
15 fees and costs Further pursuant to Labor Code 1198 it is unlawful to employ person for longer than
16 the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders WO
17 5-01 applies to Plaintiff.

18 79. Labor Code § 218.5 states: In any action brought for the nonpayment of wages, fringe
19 benefits, or health and welfare or pension fund contributions, the court shall award reasonable
20 attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and
21 costs upon the initiation of the action. Plaintiff and Class members request attorney's fees and costs
22 under § 218.5 for this cause of action which is brought for nonpayment of wages.

23 80. Defendants, and each of them willfully, knowingly, and intentionally failed to
24 calculate and compensate Defendants' non-exempt employees the overtime or double time wages
25 they were entitled to under Labor Code Labor Code §510 and 1198, the applicable Wage Order
26 and/or local regulation for all the hours they worked for Defendants.

27 81. Defendants and each of them consistently administered a corporate policy which
28 required Plaintiff and the Class members to work overtime without proper premium overtime pay

1 based on the regular rate of pay. Accordingly, Plaintiff and the Class members were and are entitled
2 to overtime compensation under California law based on the appropriate regular rate of pay.

3 82. Defendants and each of them consistently administered a corporate policy which
4 required Plaintiff and the Class members to work double time without proper premium double time
5 pay based on the regular rate of pay. Accordingly, Plaintiff and the Class members were and are
6 entitled to double time compensation under California law based on the appropriate regular rate of
7 pay.

8 83. Plaintiff and the class members have been deprived of rightfully earned overtime and
9 double time compensation as a direct and proximate result of Defendants common policies practices
10 and refusal to pay the full amount of compensation earned for all overtime and double time hours
11 worked.

12 84. Plaintiff and the class are entitled to and seek the full amount of all earned unpaid
13 overtime and double time pay attorney's fees and costs and interest pursuant to LC §1194 in an
14 amount to be determined at trial.

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93. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

94. At all times relevant to this Complaint, Labor Code §201 and 203 were in effect and applicable to Defendants.

95. Labor Code § 201 states that: “If the employee and employer relationship is separated, then the wages earned and unpaid at the time of discharge are due and payable immediately.”

97. Vacation pay is treated the same as all other forms of compensation at termination; i.e., accrued vacation pay must be paid to the employee immediately upon an employer-initiated termination and within 72 hours of an employee's resignation. [Labor Code §§ 201-202].

“If an employer willfully fails to pay, without abatement or reduction . . . any wages of any employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

99. Labor Code § 218.5 states that: In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and

1 costs upon the initiation of the action. Plaintiff and Class members request attorney's fees and costs
2 under § 218.5 for this cause of action which is brought for nonpayment of wages.

3 100. Accordingly, as a result of Defendants' conduct, Plaintiff and Class members are
4 entitled to waiting time penalties under Labor Code § 203, with interest thereon and reasonable
5 attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 1194.

6 101. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff and
7 Class members have lost and will continue to lose income and benefits in an amount to be proven at
8 trial. Plaintiff and Class members claim such amount as general damages for mental and emotional
9 distress, aggravation, and physical harm, in an amount to be proven at trial, together with pre-
10 judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-
11 judgment interest.

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1 108. Plaintiff and the Class members are entitled to damages of statutory penalties
2 pursuant to Labor Code 226(e) for these violations in an amount to be determined at trial.

3 109. Plaintiff and the Class members are entitled to and seek costs and reasonable
4 attorney's fees pursuant to Labor Code 226(e).

5 110. Plaintiff further seeks injunctive relief and reasonable attorney's fees and costs
6 pursuant to Labor Code 226(h).

7 ///

1 **FIFTH CAUSE OF ACTION**

2 **Failure to Provide Meal Breaks**

3 Violation of California Labor Code § 226.7

4 (Against all Defendants)

5 111. Plaintiff and Class members restate and incorporate by reference each and every
6 allegation of the foregoing paragraphs as though fully set forth herein.

7 112. At all relevant times, IWC Wage Order § 11 and California Labor Code §§ 226.7 and
8 512(a) were applicable to Plaintiff and Class members' employment by Defendants.

9 113. At all relevant times, California Labor Code § 226.7 provides that no employer shall
10 require an employee to work during any meal or rest period mandated by an applicable order of the
11 California IWC.

12 114. At all relevant times, IWC Wage Order § 11 and California Labor Code § 512(a)
13 provide that an employer may not require, cause or permit an employee to work for a work period
14 of more than five (5) hours per day without providing the employee with a meal period of not less
15 than thirty (30) minutes, except that if the total work period per day of the employee is no more than
16 six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

17 115. At all relevant times, Wage Order § 11 and California Labor Code § 512(a) further
18 provide that an employer may not require, cause or permit an employee to work for a work period
19 of more than ten (1) hours per day without providing the employee with a second uninterrupted meal
20 period of not less than thirty (30) minutes, except that if the total hours worked is no more than
21 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
22 the employee only if the first meal period was not waived.

23 116. The Court has interpreted § 512 to require employers to relinquish control of their
24 employees' activities during meal periods: "Employers must afford employees uninterrupted half-
25 hour periods in which they are relieved of any duty or employer control and are free to come and go
26 as they please." *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 1037.
27 Defendants did not allow Plaintiff and Class members to ever take a meal periods, and so are in
28 violation of the meal period requirement for every day on which Plaintiff and Class members were

1 entitled to a meal period.

2 117. During the relevant time period, Plaintiff and the Class members who were scheduled
3 to work for a period of time no longer than six (6) hours, and who did not waive their legally
4 mandated meal periods by mutual consent, were required to work for periods longer than five (5)
5 hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

6 118. During the relevant time period, Plaintiff and Class members who were scheduled to
7 work for a period of time in excess of six (6) hours were required to work for periods longer than
8 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest
9 period.

10 119. During the relevant time period, Defendants intentionally and willfully required
11 Plaintiff and Class members to work during meal periods and failed to compensate Plaintiff and
12 Class members the full meal period premium for work performed during meal periods.

13 120. During the relevant time period, Defendants failed to pay Plaintiff and Class members
14 the full meal period premium due pursuant to California Labor Code § 226.7.

15 121. As a direct result, Plaintiff and Class members has suffered substantial damages in
16 an amount to be proven at trial and is entitled to all appropriate legal remedies provided by the Labor
17 Code and Wage Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and
18 costs of suit.

19 122. Defendants' conduct violates IWC Wage Order § 11 and California Labor Code §§
20 226.7 and 512(a).

21 123. For all the days on which Plaintiff and Class members were denied a valid meal
22 period, they are entitled to seek and do seek from Defendants one additional hour of pay at the
23 regular rate of compensation for each workday that a meal period was not provided, pursuant to
24 Wage Order § 11 and Labor Code § 226.7(c). Further, pursuant to Labor Code § 1194, Plaintiff and
25 Class members are entitled to their attorneys' fees and costs and interest according to proof.

26 ///

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Provide Rest Periods**

3 Violation of California Labor Code § 226.7, 512(a)

4 (Against all Defendants)

5 124. Plaintiff and Class members restates and incorporates by reference each and every
6 allegation of the foregoing paragraphs as though fully set forth herein.

7 125. At all times herein set forth, IWC Wage Order § 12 and California's Labor Code §
8 226.7 were applicable to Plaintiff and Class members 's and other aggrieved employees'
9 employment by Defendants.

10 126. At all relevant times, California Labor Code § 226.7 provides that no employer shall
11 require an employee to work during any rest period mandated by IWC Wage Order § 12.

12 127. At all relevant times, IWC Wage Order § 12 provides that "[e]very employer shall
13 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
14 middle of each work period" and that the "rest period shall be based on the total hours worked daily
15 at the rate of ten (1) minutes net rest time per four (4) hours or major fraction thereof" unless the
16 total daily work times is less than three and one-half (3 ½) hours.

17 128. In Augustus v. ABM Security Services, Inc., (2016) 2 Cal.5th 257, the California
18 Supreme Court held that "state law requires employers to provide their employees with rest periods
19 that are free from duties or employer control."

20 129. Furthermore, California Labor Code § 226.7(a) provides that employees
21 compensated on a piece-rate basis during a pay period shall be compensated for rest and recovery
22 periods and other nonproductive time separate from any piece-rate compensation.

23 130. During the relevant time period, Defendants required Plaintiff and Class members to
24 work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each
25 four (4) hour period worked.

26 131. During the relevant time period, Defendants willfully required Plaintiff and Class
27 members to work during rest periods and failed to pay Plaintiff and Class members the full rest
28 period premium for work performed during rest periods.

1 132. During the relevant time period, Defendants failed to pay Plaintiff and Class members
2 the full rest period premium due pursuant to California Labor Code § 226.7.

3 133. As a direct result, Plaintiff and Class members have suffered and continues to suffer
4 substantial damages in an amount to be proven at trial and are entitled to all appropriate legal
5 remedies provided by the Labor Code and the Wage Order, including unpaid wages, liquidated
6 damages, interest, attorneys' fees, and costs of suit.

7 134. Defendants' conduct violates IWC Wage Order § 12 and California Labor Code §
8 226.7.

9 135. Plaintiff and Class members are entitled to seek and do seek from Defendants one
10 additional hour of pay at the regular rate of compensation for each workday that a rest period was
11 not provided, pursuant to Wage Order § 12 and Labor Code § 226.7(c). Further, pursuant to Labor
12 Code § 1194, Plaintiff and Class members are entitled to their attorneys' fees and costs and interest
13 according to proof.

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1 of California Labor Code §§ 210

2 d. Failing and refusing to pay Plaintiff and Class members final paycheck on time under
3 Labor Code §§ 201

4 e. Failing and refusing to pay Plaintiff and Class members. Tips and Gratuities in
5 violation of Common Law Conversion and California Civil Code § 3336

6 f. Failing and refusing to pay Plaintiff and Class members to provide Meal Periods in
7 violation of California Labor Code § 226.7

8 g. Failing and refusing to pay Rest Breaks in violation of California Labor Code § 226.7,

9 h. Failing and refusing to reimburse in violation of California Labor Code § 2802.

10 146. All of these allegations constitute unfair business practices and/or unlawful
11 business practices in violation of California B&PC §17200, *et seq*

12 147. Defendants have avoided payment of wages, overtime and double time wages and
13 other benefits as required by the California Labor Code, the California Code of Regulations and
14 applicable IWC Wage Orders. As a result of Defendants' unfair business practices, Defendants have
15 reaped unfair benefits and illegal profits at the expense of Plaintiff and Class members, others
16 similarly situated, and the members of the public. Defendants should be made to disgorge their ill-
17 gotten gains and to restore them to Plaintiff and Class members.

18 148. Plaintiff and Class members seek full restitution of said monies, as necessary and
19 according to proof, to restore any and all monies withheld and/or acquired by Defendants by means
20 of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff and Class
21 members seeks, restitution of monies retained by Defendants. Plaintiff and Class members further
22 seeks, on behalf of themselves, the appointment of a receiver, as necessary, to establish the total
23 restitutionary relief from Defendants. The restitution includes all wages withheld by Defendants as
24 a result of the unfair, unlawful, and/or fraudulent business practices; including interest thereon.
25 Absent a statutory provision specifically governing the type of claim at issue, the prejudgment
26 interest rate is 10 percent. The acts complained of herein occurred, at least in part, within the last
27 four (4) years preceding the filing of the Complaint.

28 149. Plaintiff and Class members is informed and believe and thereon allege that at all

1 times herein mentioned, Defendants have engaged in unlawful, deceptive, and unfair business
2 practices prohibited by California B&PC §17200, thereby depriving their employees, the minimum
3 working condition, standards and conditions due to them under the California labor laws and
4 Industrial Welfare commission wage orders as specifically described herein.

5 150. By and through its unfair, unlawful, and/or fraudulent business practices and acts
6 described herein, Defendants have obtained valuable services from Plaintiff and Class members and
7 all persons similarly situated, and has deprived Plaintiff and Class members and all persons similarly
8 situated of valuable rights and benefits guaranteed by law, all to their detriment.

9 151. Plaintiff and Class members, and all persons similarly situated, and all persons in
10 interest, are entitled to and do seek such relief as may be necessary to restore to them the money and
11 property which Defendants have acquired, or of which Plaintiff and Class members have been
12 deprived by means of the herein described unfair, unlawful, and/or fraudulent business practices.

13 152. Plaintiff and Class members, and all persons similarly situated, and all persons in
14 interest, are further entitled to and do seek a declaration that the above-described business practices
15 are unfair, unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the
16 herein described unfair, unlawful, and/or fraudulent business practices.

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1 160. Violation of Labor Code §§ 510 and 1194 for failure to pay overtime wages to
2 Plaintiff and similarly aggrieved employees

3 161. Violation of Labor Code §§ 201 and 203 for failure to pay all wages owed at
4 termination to Plaintiff and similarly aggrieved employees

5 162. Violation of Labor Code § 226 for failure to provide accurate, itemized wage
6 statements to Plaintiff and similarly aggrieved employees

7 163. Violation of Labor Code § 1174 for failure to maintain records for Plaintiff and
8 similarly aggrieved employees

9 164. Plaintiff and similarly aggrieved employees are also entitled to seek all reasonable
10 attorneys' fees and costs of suit pursuant to Labor Code § 2699(g).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class members pray for judgment against Defendants, and each of them, as follows:

165. For all unpaid wages due to Plaintiff and Class members in amounts to be proven at trial;

166. For the full amount of unpaid minimum wages and liquidated damages due Plaintiff and Class members pursuant to Labor Code §§ 1194 and 1194.2;

167. For the full amount of unpaid overtime and double time wages due Plaintiff and Class members pursuant to Labor Code §1194;

168. For recovery as authorized by Labor Code §226(e);

169. For recovery as authorized by Labor Code § 1199;

170. For recovery as authorized by Wage Order No. 5-2021

171. For restitution of all unpaid wages due Plaintiff and Class members ;

172. For all applicable statutory penalties, in amounts to be proven at trial;

173. For an award of waiting time penalties pursuant to section 203 of the California Labor Code, in amounts to be proven at trial;

174. For general damages including compensatory damages according to proof;

175. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as well as Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;

176. For all applicable interest on damages, wages, and penalties due;

177. For injunctive relief to prevent further violations of the California Labor Code;

178. For declaratory relief that Defendants engaged in unfair practices;

179. For restitution of all moneys due to Plaintiff and Class members , and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;

180. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant rest break was not provided;

1 181. For one (1) hour of pay at each of the employees' regular rate of compensation for
2 each workday that a legally compliant meal break was not provided

3 182. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and
4 (h), 1194(a), Code of Civil Procedure §1021.5, §210, §218.5 et seq., and all other applicable law,
5 and;

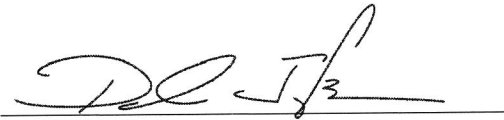
6 183. For damages of not less than \$40,000 plus punitive damages and attorney fees.

7 184. For declaratory relief that Defendants violated Labor Code §§201-203, 204, 226, 246,
8 510, 1102.5, 1197.

9 185. For all such other and further relief that the Court may deem just and proper.

10
11
12 Dated: June 3, 2024

JAFARI LAW GROUP, INC.

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14 

15 David V. Jafari
16 Saul Acherman
17 Eli Hamblet
18 Attorneys for Plaintiff THOMAS GOMEZ and
19 others similarly situated.
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff and Class members hereby demands trial by jury on all issues so triable in the
3 Complaint.

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5 Dated: June 3, 2024

JAFARI LAW GROUP, INC.

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9 David V. Jafari

Saul Acherman

Eli Hamblet

10 Attorneys for Plaintiff THOMAS GOMEZ and
11 all other similarly situated.
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