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

MICHAEL MONTELEONE, 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.

SCHELL & KAMPETER, INC., a Missouri
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-0011330

**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 §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (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 Michael Monteleone, individually and on behalf of all other members of the
2 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,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, 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
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

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

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

11 **THE PARTIES**

12 4. Plaintiff Michael Monteleone is a resident of Stockton, in San Joaquin County,
13 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
14 approximately September 2017 to January 2023. Plaintiff worked for Defendants as a UVA
15 Machine Boxer, Bagger/Palletizer, and various other positions at their facility in Lathrop,
16 California. During his employment, Plaintiff typically worked twelve (12) hours or more per
17 day and five (5) days per week. Plaintiff's primary job duties included, without limitation,
18 operating forklifts and terminal tractors, running dryers and production machines, mixing and
19 weighing products, completing delivery paperwork, loading trucks, and moving pallets.

20 5. SCHELL & KAMPETER, INC. was and is, upon information and belief, a
21 Missouri corporation, and at all times hereinafter mentioned, an employer whose employees
22 are engaged throughout this county and the State of California.

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

27 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
28 were the partners, agents, owners, or managers of SCHELL & KAMPETER, INC. at all

relevant times.

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

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

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

GENERAL ALLEGATIONS

11. Defendants are one of the fastest growing pet food manufacturers, with at least two (2) Diamond Pet Foods manufacturing facilities in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Meta, Missouri, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them

1 company-wide, regardless of their employees' assigned locations or positions. Upon
2 information and belief, Defendants set forth uniform policies and procedures in several
3 documents provided at an employee's time of hire.

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

12 14. Defendants continue to employ non-exempt or hourly paid employees in
13 California.

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

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

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

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

1 forms of compensation, but failed to include all forms of remuneration in calculating the
2 regular rate of pay for Plaintiff and class members.

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

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

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

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

1 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that they had a duty to maintain accurate and complete payroll records in
3 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
4 knowingly, and intentionally failed to do so.

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

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

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

23 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that they had a duty to maintain, for Plaintiff and class members, a
25 temperature in work areas that provided reasonable comfort consistent with industry-wide
26 standards for the nature of the process and the work performed, and to take all feasible means
27 to reduce excessive heat or humidity to a degree providing reasonable comfort, but failed to
28 do so.

1 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive full
3 reimbursement for all business-related expenses and costs they incurred during the course and
4 scope of their employment and that they did not receive full reimbursement of applicable
5 business-related expenses and costs incurred.

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

12 **PAGA REPRESENTATIVE ALLEGATIONS**

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

20 31. 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
22 alleged violations was committed."

23 32. 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 33. 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
28 following 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
3 the specific provisions of the California Labor Code alleged to have
4 been violated, including the facts and theories to support the alleged
5 violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(a) and any employer response to that notice shall be
8 accompanied by a filing fee of seventy-five dollars (\$75).
- 9 (c) The LWDA shall notify the employer and the aggrieved employee or
10 representative by certified mail that it does not intend to investigate the
11 alleged violation ("LWDA Notice") within sixty (60) calendar days of
12 the postmark date of the aggrieved employee's notice. Upon receipt of
13 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
14 (65) calendar days of the postmark date of the aggrieved employee's
15 notice, the aggrieved employee may commence a civil action pursuant
16 to California Labor Code section 2699 to recover civil penalties.

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

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

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

10 35. On November 6, 2023, Plaintiff provided written notice by online filing to the
11 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
12 Code alleged to have been violated, including facts and theories to support the alleged
13 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
14 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
15 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
16 Plaintiff PAGA Case Number LWDA-CM-992494-23. A true and correct copy of Plaintiff's
17 written notice to the LWDA and Defendants are attached hereto as "Exhibit 1."

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

21 37. Thus, Plaintiff has satisfied the administrative prerequisites under California
22 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
23 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510,
24 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

25 38. Labor Code section 558(a) provides "[a]ny employer or other person acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare
28 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

39. 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.

40. 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.

41. 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, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

42. 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.

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

44. 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, at any time from July 20, 2022, until the date of trial (“Class”).

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

All persons who worked for Defendants as non-exempt, hourly

1 paid employees in California and who received at least one wage
2 statement within one (1) year prior to the filing of the initial
complaint until the date of trial (“Subclass”).

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

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

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

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

wages, meal and rest period premiums, and/or sick leave pay due to Plaintiff and class members upon their discharge;

- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay due to Plaintiff and class members during their employment;
- (j) Whether Defendants failed to properly calculate the regular rate of pay upon which Plaintiff's and class members' sick leave rates of pay were based;
- (k) Whether Defendants 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;
- (l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the 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 members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

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

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

51. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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.”

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

53. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

54. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members 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.

55. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

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

11 57. First, during the relevant period, Defendants had, and continue to have, a
12 company-wide policy of discouraging and impeding Plaintiff and class members from
13 recording hours worked that were outside of their scheduled shifts, in order to limit the
14 amount of overtime employees could accrue. This policy of limiting overtime, coupled with
15 Defendants' practice and/or policy of understaffing and assigning heavy workloads (*see*
16 *infra*), led Plaintiff and class members to work off-the-clock after their scheduled shift times.
17 For example, about once per month, for about 15-20 minutes per instance, Defendants'
18 management required Plaintiff to clock out and complete work-related tasks before he left,
19 such as cleaning the mixing machines. This off-the-clock work could have been recorded by
20 Defendants, but they refused to do so to avoid payment of additional wages to Plaintiff and
21 class members. Thus, Defendants failed to track all of the time that employees spent working
22 after their scheduled shifts, and Plaintiff and class members received no compensation for this
23 time.

24 58. Further, during the relevant time period, Defendants failed to provide Plaintiff
25 and class members with a sufficient number of timeclock machines to use, thus exacerbating
26 the amount of time Plaintiff and class members waited in line off-the-clock and under
27 Defendants' control, time for which they were not paid. For example, Plaintiff would report
28 to work at the start of his scheduled shift, but would be required to wait several minutes in a

1 long line of employees to clock in at one timekeeping machine designated for each side of the
2 plant. Additionally, on a quarterly or semi-annual basis, Plaintiff was required to report to the
3 Defendants' facility in Ripon to cover multiple shifts, and spent an additional 30 minutes
4 traveling to and from Defendants' other facility, but was not compensated for this travel time.
5 Thus, Defendants required Plaintiff and class members to perform work off-the-clock and did
6 not compensate them for this time.

7 59. Third, during the relevant period, Defendants had, and continue to have, a
8 company-wide policy and/or practice of understaffing their facilities while assigning heavy
9 workloads, including pressure to meet productivity expectations and quotas, resulting in a
10 failure to provide Plaintiff and class members with adequate meal period coverage to permit
11 them to take compliant meal periods. For example, on information and belief, Defendants'
12 management instituted a policy requiring that machines were to not cease production during
13 business hours, in order to reach certain quotas. Additionally, Defendants implemented a
14 requirement that the machines, which were constantly running, be overseen and operated by at
15 least one employee. Because Defendants understaffed their locations, there was no one
16 available to relieve employees needing meal period coverage, and Plaintiff and class members
17 were not always afforded uninterrupted 30-minute meal periods during shifts when they were
18 entitled to receive a meal period. For example, Plaintiff was often required to work through
19 and/or return early from his meal periods, in order to attend to machines and help other
20 employees overseeing the production line, during his unpaid meal periods. Consequently,
21 Plaintiff and class members performed work during meal periods for which they were not
22 paid.

23 60. Fourth, Defendants maintained and implemented a company-wide on-premises
24 meal period policy, which effectively required Plaintiff and class members to remain on the
25 work premises during their meal periods. Because Plaintiff and class members were restricted
26 from leaving the premises during meal periods, they were denied the ability to use their meal
27 periods freely for their own purposes, such as running personal errands. Moreover,
28 Defendants required that Plaintiff and class members carry and respond to a company-issued

1 radio at all times, including during meal periods. As a result, Defendants' management
2 contacted Plaintiff and class members on their company-issued radios during meal periods to
3 discuss work-related matters. Thus, Defendants effectively maintained control over Plaintiff
4 and class members during unpaid meal periods. Defendants knew or should have known that
5 Plaintiff and class members were performing work while off-the-clock in order to meet
6 Defendants' expectations, but failed to compensate them for this time. Defendants also had a
7 practice of failing to schedule meal periods which, in conjunction with the assignment of
8 heavy workloads, further caused Plaintiff and class members to not be relieved of their duties
9 for compliant meal periods.

10 61. Additionally, because Defendants frowned upon employees accruing meal
11 period penalties, Defendants pressured Plaintiff and class members, upon threat of discipline,
12 to clock out for meal periods to reflect compliant meal periods, regardless of whether they had
13 received a compliant meal period, in order to strictly limit meal penalties that Defendants
14 would otherwise owe. In fact, Defendants implemented, on a company-wide basis, a
15 progressive disciplinary action policy for "UNAPPROVED Meal/Rest Period Violations" that
16 set out escalating forms of discipline for meal period violations. As a result of this policy,
17 Plaintiff was pressured by Defendants to clock out and record compliant meal periods for
18 shifts when he had not, in fact, received a compliant meal period. Thus, Defendants did not
19 record all hours worked during meal periods and Plaintiff and class members performed work
20 during meal periods for which they were not paid.

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

28 63. Moreover, Defendants did not pay Plaintiff and class members the correct

overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants 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 Plaintiff and class members worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

SECOND CAUSE OF ACTION

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

66. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
3 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
4 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
5 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as “the
6 time during which an employee is subject to the control of an employer, and includes all the
7 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
8 Code Regs. Tit. 8, § 11010(2)(G) (defining “Hours Worked”).

9 68. As set forth above, as a result of Defendants’ policy of limiting the amount of
10 overtime employees could accrue, Defendants required Plaintiff and class members to perform
11 work off-the-clock before and/or after their scheduled shifts. For example, Plaintiff would
12 work after his scheduled shifts to complete daily tasks, such as cleaning the mixing machines,
13 before he could leave. Defendants failed to track this time Plaintiff and class members spent
14 working off-the-clock, and Plaintiff and class members received no compensation for this
15 time.

16 69. As also stated, due to Defendants’ policies and/or practices of understaffing
17 their facilities while assigning heavy workloads, including enforcing productivity expectations
18 and quotas, failing to schedule meal periods, requiring employees to carry and use their
19 company-issued radio for work-related tasks during unpaid meal periods, and effectively
20 requiring employees to stay on the work premises during meal periods, Plaintiff and class
21 members were impeded from taking all uninterrupted meal periods to which they were entitled
22 and were required to work off-the-clock during meal periods, have their meal periods
23 interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. As a
24 result, Plaintiff and class members were not afforded timely, uninterrupted thirty (30) minute
25 meal periods during shifts in which they were entitled to receive meal periods. Defendants
26 did not pay Plaintiff and class members for the time they continued to perform tasks during
27 meal periods. In addition, as stated, in order to prevent employees from accruing meal period
28 penalties, upon information and belief, Defendants’ management pressured employees, upon

1 threat of discipline, to clock out for meal periods, but required them to continue working, time
2 for which they were not paid.

3 70. Defendants did not pay minimum wages for all hours worked by Plaintiff and
4 class members. To the extent that these off-the-clock hours did not qualify for overtime
5 premium payment, Defendants did not pay at least minimum wages for those hours worked
6 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
7 1198.

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

13 **THIRD CAUSE OF ACTION**

14 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 15 **Violations** 16 **(Against all Defendants)**

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

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

26 74. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

1 75. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
2 and the applicable IWC Wage Order also require employers to provide a second meal period
3 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
4 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
5 total hours worked is no more than twelve (12) hours, the second meal period may be waived
6 by mutual consent of the employer and the employee only if the first meal period was not
7 waived.

8 76. First, as stated, Defendants had, and continue to have, a company-wide policy
9 and/or practice of understaffing while assigning heavy workloads, including pressure to meet
10 productivity expectations and quotas, which has resulted in a lack of meal period coverage and
11 prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to
12 which they were entitled. Further, as stated, Defendants had company-wide practices and/or
13 policies of failing to schedule meal periods, which further caused Plaintiff and class members
14 to not be relieved of their duties for compliant meal periods.

15 77. Second, as stated, because Defendants frowned upon employees accruing meal
16 period penalties, Defendants' management pressured employees, upon threat of discipline or
17 suspension and leading up to termination, to clock out for meal periods, regardless of whether
18 they had received a compliant meal period, in order to strictly limit meal penalties that would
19 need to be paid by Defendants. As stated above, Defendants implemented, on a company-
20 wide basis, a progressive disciplinary action policy for "UNAPPROVED Meal/Rest Period
21 Violations" that set out escalating forms of disciplinary action for meal period violations.

22 78. Third, as stated, Defendants maintained and implemented a company-wide on-
23 premises meal period policy, which effectively required Plaintiff and class members to remain
24 on the work premises during their meal periods. Because Plaintiff and class members were
25 restricted from leaving the premises during meal periods, they were denied the ability to use
26 their meal periods freely for their own purposes, such as running personal errands. Moreover,
27 as stated, Defendants required that Plaintiff and class members carry and respond to a
28 company-issued radio at all times, including during meal periods. As a result, Defendants'

1 management contacted Plaintiff and class members on their company-issued radios during
2 meal periods to discuss work-related matters. For example, Plaintiff would have his meal
3 periods interrupted via radio to discuss urgent issues with the production line or machinery. If
4 the issue required immediate attention, Plaintiff would have to cut his meal period short to
5 return to work. Thus, Defendants effectively maintained control over Plaintiff and class
6 members during unpaid meal periods.

7 79. Defendants' practices and policies prevented Plaintiff and class members from
8 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
9 members had to work through all or part of their meal periods, had their meal periods
10 interrupted, and/or had to wait extended periods of time before taking meal periods. For
11 example, Plaintiff had to work through his meal periods due to Defendants' productivity
12 expectations, and had his meal periods interrupted and/or cut short in order to attend to
13 machines and help coworkers with tasks on the production line. As a further example,
14 Plaintiff regularly took his meal periods late due to the lack of coverage.

15 80. Fourth, during the relevant time period, Defendants maintained and
16 implemented, on a company-wide basis, a noncompliant written meal period policy which
17 prevented Plaintiff and class members from taking compliant second meal periods. The
18 policy states, "If working a 12-hour shift *or less*: One meal period must be taken before the
19 end of the 5th hour of work and BEFORE the start of the 6th hour of work. If working *more*
20 than a 12-hour shift: Two (2) meal periods are required." Defendants' written meal period
21 policy is silent as to the provision of the second meal period required for shifts between 10
22 and 12 hours, improperly suggesting that only one meal period would be provided for shifts
23 less than 12 hours. Moreover, Defendants' policy incorrectly states that employees are
24 entitled to a second meal period only "if working *more* than a 12-hour shift," when California
25 law dictates that employees are entitled a second meal period during any shift longer than ten
26 (10) hours. Defendants systematically, and on a company-wide basis, did not permit Plaintiff
27 and class members to take all second 30-minute meal periods when working shifts in excess of
28 ten (10) hours but less than twelve (12) hours. During the relevant time period, Plaintiff

1 regularly worked shifts in excess of ten (10) hours in one day without receiving an
2 uninterrupted second 30-minute meal period. Plaintiff and class members did not sign valid
3 meal period waivers on days that they were entitled to meal periods but were not relieved of
4 all duties.

5 81. Moreover, Defendants had a company-wide policy of requiring all newly hired
6 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
7 the position that non-exempt, hourly paid employees had waived their rights to first and/or
8 second meal periods for the entirety of their employment and, on that basis, did not provide
9 them with all meal periods to which they were entitled. Furthermore, Defendants' "Meal
10 Period Waiver Agreement" form requires employees to provide written notice should they
11 wish to revoke the waiver. Defendants' presumption that meal periods would not be provided
12 for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of
13 ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or
14 near the time of hire, and imposition on employees to revoke the waivers in writing,
15 discouraged and impeded Plaintiff and class members from taking all meal periods to which
16 they were entitled.

17 82. Furthermore, an employer's obligation to provide a meal period is only
18 "triggered" when the employer "employs an employee for a work period of more than five
19 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
20 anyone to work for a full five hours, its meal break obligation is triggered.").

21 [A]fter the meal break obligation is triggered . . . an employer is put to a
22 choice: it must (1) afford an off-duty meal period; (2) consent to a
23 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
24 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

25 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
26 required Plaintiff and class members to sign meal period waivers simultaneously at or near
27 their time of hire (as opposed to on a specific work day) renders them invalid and
28 unenforceable, because Defendants' obligation to provide Plaintiff and class members with

1 meal periods did not arise until they had employed them for a full five (5) hours.

2 83. At all times herein mentioned, Defendants knew or should have known that, as
3 a result of these policies, Plaintiff and class members were prevented from being relieved of
4 all duties and required to perform some of their assigned duties during meal periods.
5 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
6 members meal period premiums when meal periods were missed, shortened, interrupted,
7 and/or late.

8 84. Moreover, Defendants engaged in a company-wide practice and/or policy of
9 not paying meal period premiums owed when compliant meal periods are not provided.
10 Because of this practice and/or policy, Plaintiff and class members have not received premium
11 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants
12 did pay Plaintiff and class members premium pay for missed, late, and interrupted meal
13 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
14 premiums because Defendants systematically failed to include all forms of compensation,
15 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the
16 regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members
17 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
18 and failed to pay the full meal period premiums due.

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

23 **FOURTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 25 **(Against all Defendants)**

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

28 87. At all relevant times herein set forth, the applicable IWC Wage Order and

1 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
2 members' employment by Defendants.

3 88. At all relevant times, the applicable IWC Wage Order provides that "[e]very
4 employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period" and that the "rest period time shall be
6 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
7 hours or major fraction thereof" unless the total daily work time is less than three and one-half
8 (3 ½) hours.

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

20 90. During the relevant time period, Defendants regularly failed to authorize and
21 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
22 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
23 practices, including understaffing, assigning heavy workloads, and implementing productivity
24 expectations and quotas, prevented Plaintiff and class members from being relieved of all duty
25 to take rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled
26 with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and
27 class members not being authorized and permitted to take rest periods. In addition, as with
28 meal periods, Defendants' company-wide practice of requiring that Plaintiff and class

1 members carry a company-issued radio to respond to questions and address production line
2 issues prevented Plaintiff and class members from being able to take compliant rest periods.

3 91. Furthermore, Defendants maintained and implemented a company-wide on-
4 premises rest period policy, which mandated that Plaintiff and class members remain on the
5 premises during their rest periods. Defendants' "Meal and Rest Period Policy" states
6 "Employees are required to take their rest periods in the designated breakroom." Because
7 Plaintiff and class members were restricted from leaving Defendants' premises during rest
8 periods, they were denied the ability to use their rest periods freely for their own purposes,
9 such as completing personal errands. Thus, Defendants effectively maintained control over
10 Plaintiff and class members during rest periods.

11 92. As a result of Defendants' practices and policies, Plaintiff and class members
12 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
13 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
14 his rest periods interrupted to attend to machinery or to urgent issues in the production line,
15 due to the lack of coverage and Defendants' failure to schedule rest periods for employees.

16 93. Defendants have also engaged in a company-wide practice and/or policy of not
17 paying rest period premiums owed when compliant rest periods are not authorized and
18 permitted. Because of this practice and/or policy, Plaintiff and class members have not
19 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
20 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
21 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
22 premium wages because Defendants failed to include all forms of compensation, such as
23 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular
24 rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed
25 to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and
26 the applicable IWC Wage Order.

27 94. Defendants' conduct violates the applicable IWC Wage Order and California
28 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled

1 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
2 compensation for each work day that a compliant rest period was not authorized and
3 permitted.

4 **FIFTH CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 6 **Statements and Failure to Maintain Accurate Payroll Records** 7 **(Against all Defendants)**

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

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

15 97. At all relevant times, Defendants have knowingly and intentionally provided
16 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
17 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
18 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
19 applicable hourly rates in effect during the pay period, including rates of pay for overtime
20 wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number
21 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
22 226(a)(2), 226(a)(5), and 226(a)(9).

23 98. Because Defendants did not record the time Plaintiff and Subclass members
24 spent working off the clock and deducted time from their records for meal periods that were
25 interrupted and/or missed (and therefore time for which they should have been paid),
26 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
27 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same
28 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and

1 Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly
2 rates of pay in effect during the pay period and the corresponding accurate number of hours
3 worked at each hourly rate, in violation of section 226(a)(9).

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

12 100. The wage statement deficiencies also include, among other things, failing to list
13 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
14 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
15 for which employees were paid; failing to list the name of the employee and only the last four
16 digits of his or her social security number or an employee identification number other than a
17 social security number; failing to list the name and address of the legal entity that is the
18 employer; and/or failing to state all hours worked as a result of not recording or stating hours
19 worked off-the-clock.

20 101. California Labor Code section 1174(d) provides that "[e]very person employing
21 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
22 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or
26 establishments" At all relevant times, and in violation of Labor Code section 1174(d),
27 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
28 members showing the daily hours they worked and the wages paid thereto as a result of failing

1 to record the off-the-clock hours that they worked.

2 102. California Labor Code section 1198 provides that the maximum hours of work
3 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
4 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
5 employment of any employees for longer hours than those fixed by the order or under
6 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
7 Wage Order, employers are required to keep accurate time records showing when the
8 employee begins and ends each work period and meal period. During the relevant time
9 period, Defendants engaged in company-wide practices and/or policies of failing to record
10 actual hours worked, and thereby failed to keep accurate records of work period and meal
11 period start and end times for Plaintiff and Subclass members, in violation of section 1198.
12 Also, in light of Defendants’ failure to provide Plaintiff and Subclass members with second
13 30-minute meal periods to which they were entitled, Defendants kept no records of meal start
14 and end times for second meal periods.

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

19 **SIXTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 21 **Termination** 22 **(Against all Defendants)**

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

25 105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 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.

106. On information and belief, Defendants have a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Defendants terminated Plaintiff on or about January 13, 2023; however, Defendants did not provide Plaintiff with his final pay until about January 20, 2023. Thus, Defendants failed to pay Plaintiff his final wages immediately, in violation of California Labor Code section 201.

107. Additionally, 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, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

108. 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.

SEVENTH CAUSE OF ACTION

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

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

110. 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.

111. 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.

112. 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.

113. 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.

114. 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.

115. 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.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: “[w]hen the employer requires the use of tools or equipment or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may provide and maintain hand tools and equipment customarily required by the trade or craft.”

117. During the relevant time period, Defendants, on a company-wide basis, required Plaintiff and class members to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Plaintiff was required to use his personal cellular phone to communicate with his managers to discuss work-related issues, especially when he was covering shifts at Defendants’ facility in Ripon, California. Although Defendants required Plaintiff and class members to use their personal mobile devices and mobile data to carry out their work-related duties, Defendants failed to reimburse them for their costs incurred.

118. Additionally, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and class members to utilize their own personal vehicles to carry out company business, such as driving to another location to cover shifts, but failed to reimburse them for all costs of travel, including mileage. For example, Plaintiff drove his personal vehicle 40 miles roundtrip, per instance, to work at Defendants’ other facility in Ripon, California every few months for several days or weeks at a time. Although Defendants required Plaintiff and class members to use their own personal vehicles to fulfill their job

1 duties, Defendants never reimbursed them for their travel expenses.

2 119. Defendants could have provided Plaintiff and class members with the actual
3 tools for use on the job, such as company phones and company vehicles. Or, Defendants
4 could have reimbursed employees for the cost of their cellular phone, mileage, and travel
5 expenses. Instead, Defendants passed these operating costs off onto Plaintiff and class
6 members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
7 wage.

8 120. Defendants' company-wide policy and/or practice of passing on their operating
9 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
10 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
11 business-related expenses and costs.

12 121. Plaintiff and class members are entitled to recover from Defendants their
13 business-related expenses incurred during the course and scope of their employment, plus
14 interest.

15 **NINTH CAUSE OF ACTION**

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

17 **(Against all Defendants)**

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

20 123. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
22 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
23 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
24 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
25 those Labor Code sections not found in section 2699.5, including sections 246, 248.6, 516,
26 and 1182.12.

27 124. Defendants' conduct, as alleged herein, violates numerous sections of the
28 California Labor Code, including, but not limited to, the following:

- 1 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
2 Wage Order for Defendants' failure to compensate Plaintiff and other
3 aggrieved employees with all required overtime pay, as alleged herein;
- 4 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
5 applicable IWC Wage Order for Defendants' failure to include all forms
6 of remuneration in the regular rate of pay as required by law for
7 purposes of paying overtime wages and/or meal and rest period
8 premiums to Plaintiff and other aggrieved employees, as alleged herein;
- 9 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
10 1198, and the applicable IWC Wage Order for Defendants' failure to
11 compensate Plaintiff and other aggrieved employees with at least
12 minimum wages for all hours worked, as alleged herein;
- 13 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
15 and other aggrieved employees with meal periods, as alleged herein;
- 16 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
17 applicable IWC Wage Order for Defendants' failure to authorize and
18 permit Plaintiff and other aggrieved employees to take rest periods, as
19 alleged herein;
- 20 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
21 IWC Wage Order for failure to provide accurate and complete wage
22 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 23 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
24 IWC Wage Order for failure to maintain payroll records, as alleged
25 herein;
- 26 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
27 earned wages upon termination, as alleged herein;
- 28 (i) Violation of Labor Code section 204 for failure to pay all earned wages

during employment, as alleged herein;

- (j) Violation of Labor Code sections 246 and 248.6 for failure to properly calculate the sick leave paid to Plaintiff and other aggrieved employees, as set forth below;
- (k) Violation of Labor Code section 1198 for failure to maintain, for Plaintiff and other aggrieved employees, 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 to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort, as set forth below; and
- (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

125. 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. 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.”

126. At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. California Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) “[c]alculated in the same manner as

1 the regular rate of pay for the workweek in which the employee uses paid sick time, whether
2 or not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by
3 dividing the employee’s total wages, not including overtime premium pay, by the employee’s
4 total nonovertime hours worked in the full pay periods occurring within the prior 90 days of
5 employment; provided that, for nonexempt employees paid by piece rate, commission or other
6 method that uses all hours to determine the regular rate of pay, total wages, not including
7 overtime premium pay, shall be divided by all hours, to determine the correct amount of
8 COVID-19 supplemental paid sick leave under this subdivision.”

9 127. During the relevant time period, on information and belief, Defendants did not
10 pay Plaintiff and other aggrieved employees the correct sick leave rates of pay. In addition to
11 an hourly wage, Defendants paid Plaintiff and other aggrieved employees incentive pay,
12 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
13 California Labor Code, Defendants failed to incorporate all remunerations, including incentive
14 pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
15 purposes of calculating the sick leave rate. Therefore, during times when Plaintiff and other
16 aggrieved employees took sick leave and received these other forms of pay, Defendants failed
17 to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically,
18 Defendants paid Plaintiff and other aggrieved employees sick leave based on their hourly rate
19 of pay instead of their regular rate of pay.

20 128. Defendants’ failure to properly calculate the sick leave rates of pay based on all
21 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other
22 aggrieved employees on a company-wide basis, in violation of Labor Code sections 246(l) and
23 248.6(b)(3)(A). Plaintiff and other aggrieved employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

25 129. At all relevant times, California Labor Code section 1198 dictates that no
26 employer may employ an employee under conditions of labor that are prohibited by the
27 applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . .
28 the standard conditions of labor fixed by the commission shall be the . . . standard conditions

1 of labor for employees. The employment of any employee . . . under conditions of labor
2 prohibited by the order is unlawful.”

3 130. California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide
4 that “[t]he temperature maintained in each work area shall provide reasonable comfort
5 consistent with industry-wide standards for the nature of the process and the work
6 performed. . . . If excessive heat or humidity is created by the work process, the employer
7 shall take all feasible means to reduce such excessive heat or humidity to a degree providing
8 reasonable comfort.” California law requires an employer to endeavor to provide a safe and
9 healthy workplace (Cal. Code Regs. tit. 8, § 3203). Moreover, California Labor Code section
10 6720 required the California Division of Occupational Safety and Health (“OSHA”) to
11 propose an indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of
12 April 22, 2019, applies its proposed regulations to “all indoor work areas where the
13 temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

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

20 132. During the relevant time period, Plaintiff and other aggrieved employees with
21 were subjected to excessive heat equaling or exceeding 82 degrees Fahrenheit. Defendants
22 failed to provide Plaintiff and other aggrieved employees with reasonable comfort by
23 maintaining the indoor temperature within the range of industry standards by providing
24 adequate air conditioning, in violation of California Labor Code section 1198 and IWC Wage
25 Order 1-2001, subdivision 15. Plaintiff and other aggrieved employees who were present in
26 Defendants’ facilities were not provided sufficient air conditioning or enough fans, and would
27 be required to work indoors at 120 degrees Fahrenheit or more.

28 133. Accordingly, Defendants failed to maintain, in their work areas, a temperature

1 providing reasonable comfort for their employees, including Plaintiff and other aggrieved
2 employees, in violation of California Labor Code section 1198 . Plaintiff and other aggrieved
3 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
4 2699(a), (f), and (g).

5 **TENTH CAUSE OF ACTION**

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

7 **Unlawful Business Practices**

8 **(Against all Defendants)**

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

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

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

19 137. Defendants’ activities, as alleged herein, are violations of California law, and
20 constitute unlawful business acts and practices in violation of California Business &
21 Professions Code sections 17200, *et seq.*

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

- 25 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
26 class members, to work overtime without paying them proper
27 compensation in violation of California Labor Code sections 510 and
28 1198, and the applicable IWC Wage Order, as alleged herein;

- (b) Failing to include all forms of remuneration in the “regular rate” of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, in violation of California Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to authorize and permit Plaintiff and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing to provide Plaintiff and class members with accurate wage 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 timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (h) 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
- (i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

139. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,

1 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
2 days from the commencement of employment with paid sick days, to be accrued at least one
3 hour for every 30 hours worked. Further, Labor Code section 246(l) provides that an
4 employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time
5 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
6 the workweek in which the employee uses paid sick time, whether or not the employee
7 actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt
8 employees shall be calculated by dividing the employee’s total wages, not including overtime
9 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
10 days of employment.”

11 140. At all relevant times herein, California Labor Code section 248.6 provides
12 covered employees with COVID-19 supplemental paid sick leave. California Labor Code
13 section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave
14 shall be compensated at a rate equal to the following: 1) “[c]alculated in the same manner as
15 the regular rate of pay for the workweek in which the employee uses paid sick time, whether
16 or not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by
17 dividing the employee’s total wages, not including overtime premium pay, by the employee’s
18 total nonovertime hours worked in the full pay periods occurring within the prior 90 days of
19 employment; provided that, for nonexempt employees paid by piece rate, commission or other
20 method that uses all hours to determine the regular rate of pay, total wages, not including
21 overtime premium pay, shall be divided by all hours, to determine the correct amount of
22 COVID-19 supplemental paid sick leave under this subdivision.”

23 141. During the relevant time period, on information and belief, Defendants did not
24 pay Plaintiff and class members the correct sick leave rates of pay. In addition to an hourly
25 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
26 and/or other forms of remuneration. However, in violation of the California Labor Code,
27 Defendants failed to incorporate all remunerations, including incentive pay and/or
28 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of

1 calculating the sick leave rate. Therefore, during times when Plaintiff and class members took
2 sick leave and received these other forms of pay, Defendants failed to pay all sick leave
3 benefits by paying a lower sick leave rate than required. Specifically, Defendants paid
4 Plaintiff and class members sick leave based on their hourly rate of pay instead of their regular
5 rate of pay.

6 142. Defendants' failure to properly calculate the sick leave rates of pay based on all
7 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class
8 members on a company-wide basis, in violation of Labor Code sections 246(l) and
9 248.6(b)(3)(A).

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

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

20 **ELEVENTH CAUSE OF ACTION**

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

22 **Unfair Business Practices**

23 **(Against all Defendants)**

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

26 146. Defendants are "persons" as defined by California Business & Professions
27 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
28 and/or associations.

147. 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.

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

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

150. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 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 statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

1 Plaintiff requests a trial by jury.

2 **PRAYER FOR RELIEF**

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

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

8 **Class Certification**

9 2. That this case be certified as a class action;

10 3. That Plaintiff be appointed as the representative of the Class and Subclass;

11 4. That counsel for Plaintiff be appointed as class counsel.

12 //

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

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

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

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

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

23 9. For such other and further relief as the Court may deem equitable and
24 appropriate.

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

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

1 11. For general unpaid wages and such general and special damages as may be
2 appropriate;

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

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

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

8 15. For such other and further relief as the Court may deem equitable and
9 appropriate.

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

11 16. That the Court declare, adjudge, and decree that Defendants violated California
12 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
13 willfully failing to provide all meal periods to Plaintiff and class members;

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

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

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

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

22 21. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

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

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

27 23. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiff and class members to take all rest periods;

2 24. 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 rest period was not
4 authorized and permitted;

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

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

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

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

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

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

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

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

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

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

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

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

27 **As to the Sixth Cause of Action**

28 36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
2 meal and rest period premiums, and/or sick leave pay owed at the time of termination of the
3 employment of Plaintiff and other terminated class members;

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

6 38. For waiting time penalties according to proof pursuant to California Labor
7 Code section 203 for all employees who have left Defendants' employ;

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

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

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

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

15 42. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
17 overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay
18 during their employment;

19 43. For all actual, consequential and incidental losses and damages, according to
20 proof;

21 44. For statutory penalties according to proof pursuant to California Labor Code
22 section 210;

23 45. For pre-judgment interest on any unpaid wages from the date such amounts
24 were due, or as otherwise provided by law;

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

27 47. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

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

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

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

As to the Tenth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 246 and 248.6 (by failing to properly calculate sick leave pay); 1198 (by failing to maintain a temperature in work areas that provide reasonable comfort); and 2802 (by failing to reimburse business expenses);

1 55. For civil penalties pursuant to the California Labor Code, including sections
2 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor
3 Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12,
4 1194, 1197, 1197.1, 1198, and 2802;

5 56. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d),
8 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

9 57. For pre-judgment and post-judgment interest as provided by law; and

10 58. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 //

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

14 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
15 to provide Plaintiff and class members all overtime wages due to them, failing to include all
16 forms of remuneration in the "regular rate" of pay for purposes of paying overtime wages
17 and/or meal and rest period premiums to Plaintiff and class members, failing to provide
18 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
19 class members all meal periods, failing to authorize and permit Plaintiff and class members to
20 take all rest periods, failing to provide Plaintiff and class members accurate and complete
21 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
22 failing to timely pay Plaintiff and class members all earned wages during employment, failing
23 to properly calculate Plaintiff's and class members' sick leave pay, and failing to reimburse
24 Plaintiff and class members for business-related expenses, constitutes an unlawful business
25 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

26 60. For restitution of unpaid wages to Plaintiff and all class members and
27 prejudgment interest from the day such amounts were due and payable;

28 61. For the appointment of a receiver to receive, manage, and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections
3 17200, *et seq.*;

4 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
5 California Code of Civil Procedure section 1021.5; and

6 63. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Eleventh Cause of Action**

9 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
10 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
11 an unfair business practice in violation of California Business and Professions Code sections
12 17200, *et seq.*;

13 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
14 from Plaintiff and class members and prejudgment interest from the day such amounts were
15 due and payable;

16 66. For the appointment of a receiver to receive, manage, and distribute any and all
17 funds disgorged from Defendants and determined to have been wrongfully acquired by
18 Defendants as a result of violations of California Business & Professions Code sections
19 17200, *et seq.*;

20 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Code of Civil Procedure section 1021.5;

22 68. For pre-judgment and post-judgment interest as provided by law; and

23 69. For such other and further relief as the Court may deem equitable and
24 appropriate.

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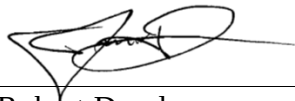
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Dated: April 23, 2024

Respectfully submitted,

Capstone Law APC

By: 
Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Michael Monteleone

EXHIBIT “1”

SAIRAH BUDHWANI
310.929.5455 Direct
Sairah.Budhwani@capstonelawyers.com

November 6, 2023

VIA ONLINE SUBMISSION

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

Subject: *Michael Monteleone v. Schell & Kampeter, Inc.*

Dear PAGA Administrator:

This office represents Michael Monteleone in connection with his claims under the California Labor Code. Mr. Monteleone was an employee of SCHELL & KAMPETER, INC. dba Diamond Pet Foods. For the purpose of this letter, Mr. Monteleone refers to this entity as “DIAMOND.”

The employer may be contacted directly at the address below:

SCHELL & KAMPETER, INC.
103 N. OLIVE
META, MO 65058

Mr. Monteleone 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. Monteleone seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DIAMOND 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.

DIAMOND employed Mr. Monteleone as an hourly paid, non-exempt employee from approximately September 2017 to January 2023. Mr. Monteleone worked for DIAMOND as a UVA Machine Boxer, Bagger/Palletizer, and various other positions at its facility in Lathrop, California. During his employment, Mr. Monteleone typically worked twelve (12) or more hours per day and five (5) or more days per week. Mr. Monteleone was compensated approximately \$23.21 per hour at the time his employment ended with DIAMOND. His job duties included, without limitation, operating forklifts and terminal tractors, running dryers and production machines, mixing and weighing products, completing delivery paperwork, loading trucks, and moving pallets.

DIAMOND committed one or more of the following Labor Code violations against Mr. Monteleone the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

DIAMOND’s Company-Wide and Uniform Payroll and HR Practices

SCHELL & KAMPETER, INC. is a Missouri corporation. They are one of the fastest growing pet food manufacturers, with at least two (2) Diamond Pet Foods manufacturing facilities in California. Upon information and belief, DIAMOND maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Meta, Missouri, for all non-exempt, hourly paid employees working for DIAMOND in California, including Mr. Monteleone and other aggrieved employees. At all relevant times, DIAMOND issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Monteleone and other aggrieved employees, regardless of their location or position.

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

DIAMOND willfully failed to pay all overtime wages owed to Mr. Monteleone and other aggrieved employees. During the relevant time period, Mr. Monteleone 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

¹ These facts, theories, and claims are based on Mr. Monteleone’s experience and counsel’s review of those records currently available relating to Mr. Monteleone’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. Monteleone 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.

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, DIAMOND had a company-wide policy and/or practice of discouraging and impeding Mr. Monteleone and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with DIAMOND's practice and/or policy of understaffing and assigning heavy workloads (*see infra*), led Mr. Monteleone and other aggrieved employees to work off-the-clock after their scheduled shift times. For example, about once per month, for about 15-20 minutes per instance, DIAMOND's management required Mr. Monteleone to clock out and complete work-related tasks before he left, such as cleaning the mixing machines. This off-the-clock work could have been recorded by DIAMOND, but it refused to do so to avoid payment of additional wages to Mr. Monteleone and other aggrieved employees. Thus, DIAMOND failed to track this time spent working after scheduled shifts, and Mr. Monteleone and other aggrieved employees received no compensation for this time.

Second, in conjunction with their policy on limiting overtime accrual, DIAMOND had, and continues to have, a company-wide policy and/or practice of requiring Mr. Monteleone and other aggrieved employees to perform work off-the-clock before their shifts. For example, DIAMOND implemented, on a company-wide basis, an employer-imposed requirement that Mr. Monteleone and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings by a "medical assistant" upon entering the facility, but before clocking in for their scheduled shifts. Prior to their shifts, Mr. Monteleone and other aggrieved employees were required to spend time undergoing a temperature check and/or respond to a COVID-19 symptoms and exposure questionnaire, before being permitted to clock in for their shifts. Even though DIAMOND required these health screenings, DIAMOND did not provide Mr. Monteleone and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Further, during the relevant time period, DIAMOND failed to provide Mr. Monteleone and other aggrieved employees with a sufficient number of timeclock machines to use, thus exacerbating the amount of time Mr. Monteleone and other aggrieved employees waited in line off-the-clock and under DIAMOND's control, time for which they were not paid. For example, Mr. Monteleone would report to work at the start of his scheduled shift, but would be required to wait several minutes in a long line of employees to clock in at one timekeeping machine designated for each side of the plant. Additionally, on a quarterly or semi-annual basis, Mr. Monteleone was required to report to the DIAMOND's facility in Ripon to cover multiple shifts, and spent an additional 30 minutes traveling to and from DIAMOND's other facility, but was not compensated for this travel time.

Third, as stated, DIAMOND had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while assigning heavy workloads, including pressure to meet productivity expectations and quotas, resulting in a failure to provide Mr. Monteleone and other aggrieved employees with adequate meal period coverage to permit them to take compliant meal periods. For example, on information and belief, DIAMOND's management instituted a policy requiring that machines were to not cease production during business hours, in order to reach certain quotas. Additionally, DIAMOND implemented a requirement that the machines, which were constantly running, be overseen and operated by at least one employee. Because DIAMOND understaffed its locations, there was no one available to relieve employees needing meal period coverage, and Mr. Monteleone and other aggrieved employees were not always afforded uninterrupted 30-minute meal

periods during shifts when they were entitled to receive a meal period. For example, Mr. Monteleone was often required to work through and/or return early from his meal periods, in order to attend to machines and help other employees overseeing the production line, during his unpaid meal periods. Consequently, Mr. Monteleone and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, DIAMOND maintained and implemented a company-wide on-premises meal period policy, which effectively required Mr. Monteleone and other aggrieved employees to remain on the work premises during their meal periods. Because Mr. Monteleone and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Moreover, DIAMOND required that Mr. Monteleone and other aggrieved employees carry and respond to a company-issued radio at all times, including during meal periods. As a result, DIAMOND's management contacted Mr. Monteleone and other aggrieved employees on their company-issued radios during meal periods to discuss work-related matters. Thus, DIAMOND effectively maintained control over Mr. Monteleone and other aggrieved employees during unpaid meal periods. DIAMOND knew or should have known that Mr. Monteleone and other aggrieved employees were performing work while off-the-clock in order to meet DIAMOND's expectations, but failed to compensate them for this time. DIAMOND also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Monteleone and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Additionally, because DIAMOND frowned upon employees accruing meal period penalties, DIAMOND pressured Mr. Monteleone and other aggrieved employees, upon threat of discipline, to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that DIAMOND would otherwise owe. In fact, DIAMOND implemented, on a company-wide basis, a progressive disciplinary action policy for "UNAPPROVED Meal/Rest Period Violations" that set out escalating forms of discipline for meal period violations. As a result of this policy, Mr. Monteleone was pressured by DIAMOND to clock out and record compliant meal periods for shifts when he had not, in fact, received a compliant meal period. Thus, DIAMOND did not record all hours worked during meal periods and Mr. Monteleone and other aggrieved employees performed work during meal periods for which they were not paid.

DIAMOND knew or should have known that as a result of these company-wide practices and/or policies, Mr. Monteleone 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. Monteleone and other aggrieved employees 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. Monteleone and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, DIAMOND did not pay Mr. Monteleone and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, DIAMOND paid Mr. Monteleone and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DIAMOND 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. Monteleone and

other aggrieved employees worked overtime and received these other forms of pay, DIAMOND failed to pay all overtime wages by paying a lower overtime rate than required.

For example, DIAMOND paid Mr. Monteleone and other aggrieved employees incentive pay and/or nondiscretionary bonuses for meeting safety goals, which were listed on Mr. Monteleone's and other aggrieved employees' wage statements as "Bonus." During the pay periods that Mr. Monteleone and other aggrieved employees were paid overtime wages, DIAMOND did not incorporate these payments into Mr. Monteleone'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, DIAMOND paid Mr. Monteleone and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. DIAMOND'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. Monteleone and other aggrieved employees on a company-wide basis.

DIAMOND's failure to pay Mr. Monteleone 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. Monteleone 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 IWC 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, as a result of DIAMOND's policy of limiting the amount of overtime employees could accrue, DIAMOND required Mr. Monteleone and other aggrieved employees to perform work off-the-clock before and/or after their scheduled shifts. For example, Mr. Monteleone would work after his scheduled shifts to complete daily tasks, such as cleaning the mixing machines, before he could leave. As stated, DIAMOND also had a company-wide policy and/or practice requiring Mr. Monteleone and other aggrieved employees to perform work while off-the-clock before their shifts, including submitting to mandatory COVID-19 temperature checks and/or health screenings, waiting in line to clock in at an inadequate number of timekeeping machines, and driving to DIAMOND's other facilities to cover shifts. DIAMOND failed to track this time Mr. Monteleone and other aggrieved employees spent working off-the-clock, and Mr. Monteleone and other aggrieved employees received no compensation for this time.

As also stated, due to DIAMOND's uniform practices of understaffing its facilities while assigning heavy workloads (including enforcing productivity expectations and quotas), failing to schedule meal periods, requiring employees to carry and use their company-issued radio for work-related tasks during unpaid meal periods, and effectively requiring employees to stay on the work premises during meal periods, Mr. Monteleone 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. As a result, Mr. Monteleone 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. DIAMOND did not pay Mr. Monteleone and other aggrieved employees for the time they continued to perform tasks during meal periods. In addition, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, DIAMOND's management pressured employees, upon threat of discipline, to clock out for meal periods, but required them to continue working, time for which they were not paid.

Thus, DIAMOND did not pay at least minimum wages for all hours worked by Mr. Monteleone and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, DIAMOND 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, DIAMOND regularly failed to pay at least minimum wages to Mr. Monteleone 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. Monteleone 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.

First, during the relevant time period, as stated, DIAMOND had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressure to meet productivity expectations and quotas, which has resulted in a lack of meal period coverage and prevented Mr. Monteleone and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, DIAMOND had company-wide practices and/or policies of failing to schedule meal periods, which further caused Mr. Monteleone and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Second, as stated, because DIAMOND frowned upon employees accruing meal period penalties, DIAMOND's pressured employees, upon threat of discipline or suspension and leading up to termination, to clock out for meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by DIAMOND. As

stated, DIAMOND implemented, on a company-wide basis, a progressive disciplinary action policy for “UNAPPROVED Meal/Rest Period Violations” that set out escalating forms of disciplinary action for meal period violations.

Third, as stated, DIAMOND maintained and implemented a company-wide on-premises meal period policy, which effectively required Mr. Monteleone and other aggrieved employees to remain on the work premises during their meal periods. Because Mr. Monteleone and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Moreover, as stated, DIAMOND required that Mr. Monteleone and other aggrieved employees carry and respond to a company-issued radio at all times, including during meal periods. As a result, DIAMOND’s management contacted Mr. Monteleone and other aggrieved employees on their company-issued radios during meal periods to discuss work-related matters. For example, Mr. Monteleone would have his meal periods interrupted via radio to discuss urgent issues with the production line or machinery. If the issue required immediate attention, Mr. Monteleone would have to cut his meal period short to return to work. Thus, DIAMOND effectively maintained control over Mr. Monteleone and other aggrieved employees during unpaid meal periods.

DIAMOND’s practices and policies prevented Mr. Monteleone and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Monteleone 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, Mr. Monteleone had to work through his meal periods due to DIAMOND’s productivity expectations, and had his meal periods interrupted and/or cut short in order to attend to machines and help coworkers with tasks on the production line. As a further example, Mr. Monteleone regularly took his meal periods late due to the lack of coverage.

Fourth, during the relevant time period, DIAMOND maintained and implemented, on a company-wide basis, a noncompliant written meal period policy which prevented Mr. Monteleone and other aggrieved employees from taking compliant second meal periods. The policy states, “If working a 12-hour shift *or less*: One meal period must be taken before the end of the 5th hour of work and BEFORE the start of the 6th hour of work. If working *more* than a 12-hour shift: Two (2) meal periods are required.” DIAMOND’s written meal period policy is silent as to the provision of the second meal period required for shifts between 10 and 12 hours, improperly suggesting that only one meal period would be provided for shifts less than 12 hours. Moreover, DIAMOND’s policy incorrectly states that employees are entitled to a second meal period only “if working *more* than a 12-hour shift,” when California law dictates that employees are entitled a second meal period during any shift longer than ten (10) hours. DIAMOND systematically, and on a company-wide basis, did not permit Mr. Monteleone and other aggrieved employees to take all second 30-minute meal periods when working shifts in excess of ten (10) hours but less than twelve (12) hours. During the relevant time period, Mr. Monteleone regularly worked shifts in excess of ten (10) hours in one day without receiving an uninterrupted second 30-minute meal period. Mr. Monteleone and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods but were not relieved of all duties.

Moreover, DIAMOND had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. DIAMOND took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to

which they were entitled. Furthermore, DIAMOND's "Meal Period Waiver Agreement" form requires employees to provide written notice should they wish to revoke the waiver. DIAMOND's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Monteleone and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That DIAMOND required Mr. Monteleone and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because DIAMOND's obligation to provide Mr. Monteleone and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

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

Furthermore, DIAMOND engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Mr. Monteleone and other aggrieved employees have not received all premium pay for missed, interrupted, late, and/or shortened meal periods. Alternatively, to the extent that DIAMOND did pay Mr. Monteleone and other aggrieved employees premium pay for missed, late, interrupted, and/or shortened meal periods, DIAMOND did not pay Mr. Monteleone and other aggrieved employees at the correct rate of pay for premiums because DIAMOND 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.

Accordingly, DIAMOND failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Monteleone and other aggrieved employees are entitled to 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, DIAMOND regularly failed to authorize and permit Mr. Monteleone 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, DIAMOND's company-wide practices, including understaffing, assigning heavy workloads, and implementing productivity expectations and quotas, prevented Mr. Monteleone and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. DIAMOND also failed to schedule rest periods, which, coupled with DIAMOND's failure to provide adequate rest period coverage, further led to Mr. Monteleone and other aggrieved employees not being authorized and permitted to take rest periods. In addition, as with meal periods, DIAMOND's company-wide practice of requiring that Mr. Monteleone and other aggrieved employees carry a company-issued radio to respond to questions and address production line issues prevented them from being able to take compliant rest periods.

Furthermore, during the relevant time period, DIAMOND maintained a company-wide on-premises rest period policy, which mandated that Mr. Monteleone and other aggrieved employees remain on DIAMOND's premises during their rest periods. DIAMOND's "Meal and Rest Period Policy" states "Employees are required to take their rest periods in the designated breakroom." Because Mr. Monteleone 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, DIAMOND effectively maintained control over Mr. Monteleone and other aggrieved employees during rest periods.

As a result of DIAMOND's practices and policies, Mr. Monteleone 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. Monteleone had his rest periods interrupted to attend to machinery or to urgent issues in the production line, due to the lack of coverage and DIAMOND's failure to schedule rest periods for employees.

DIAMOND 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. Monteleone and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DIAMOND did pay Mr. Monteleone and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DIAMOND did not pay Mr. Monteleone and other aggrieved employees at the correct rate of pay for premiums because DIAMOND 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, DIAMOND failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Monteleone and other aggrieved employees are entitled to 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. DIAMOND has not provided Mr. Monteleone 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, DIAMOND has knowingly and intentionally provided Mr. Monteleone and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DIAMOND issued uniform wage statements to Mr. Monteleone and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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, DIAMOND violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because DIAMOND did not record the time Mr. Monteleone 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), DIAMOND did not list the correct amount of gross wages and net wages earned by Mr. Monteleone and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DIAMOND failed to accurately list the total number of hours worked by Mr. Monteleone 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).

In addition, because DIAMOND did not calculate Mr. Monteleone'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, DIAMOND did not list the correct amount of gross in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). DIAMOND 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).

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 and address 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), DIAMOND willfully failed to maintain accurate payroll records for Mr. Monteleone 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, DIAMOND engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Monteleone and other aggrieved employees in violation of section 1198. Furthermore, in light of DIAMOND’s failure to provide Mr. Monteleone and other aggrieved employees with second 30-minute meal periods to which they were entitled, DIAMOND kept no records of meal start and end times for second meal periods.

Because DIAMOND failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Monteleone 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. Monteleone 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. Monteleone 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 § 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, DIAMOND failed to pay Mr. Monteleone 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. Monteleone 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.

On information and belief, DIAMOND had a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, DIAMOND terminated Mr. Monteleone on or about January 13, 2023; however, DIAMOND did not provide Mr. Monteleone with his final pay until about January 20, 2023. Thus, DIAMOND failed to pay Mr. Monteleone his final wages immediately, in violation of California Labor Code section 201.

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

Mr. Monteleone 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 and 248.6 – 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. 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.”

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) “[c]alculated 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) “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

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

DIAMOND’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. Monteleone and other aggrieved employees on a company-wide basis in violation of Labor Code sections 246(l) and 248.6(b)(3)(A). Mr. Monteleone 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, DIAMOND violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15), because DIAMOND 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. Monteleone and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit. DIAMOND failed to provide Mr. Monteleone 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, subdivision 15. For example, Mr. Monteleone and other aggrieved employees who were present in DIAMOND’s facilities were not provided sufficient air conditioning or enough fans, and would be required to work indoors at 120 degrees Fahrenheit or more. Accordingly, DIAMOND failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, Mr. Monteleone and other aggrieved employees, in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15).

Mr. Monteleone 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 § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: “[w]hen the employer requires the use of tools or equipment or are necessary to the performance of a job, such

tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, DIAMOND, on a company-wide basis, required that Mr. Monteleone and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Monteleone was required to use his personal cellular phone to communicate with his managers to discuss work-related issues, especially when he was covering shifts at DIAMOND’s facility in Ripon, California. Although DIAMOND required Mr. Monteleone and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, DIAMOND failed to reimburse them for these costs.

Additionally, during the relevant time period, DIAMOND, on a company-wide basis, required that Mr. Monteleone and other aggrieved employees use their own personal vehicles for work purposes, such as driving to another location to cover shifts, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Monteleone drove his personal vehicle 40 miles roundtrip, per instance, to work at DIAMOND’s other facility in Ripon, California every few months for several days or weeks at a time. Although DIAMOND required Mr. Monteleone and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, DIAMOND failed to reimburse them for their mileage or travel expenses.

DIAMOND could have provided Mr. Monteleone and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles. Or, DIAMOND could have reimbursed employees for the costs of their mobile device usage, travel expenses, and mileage. Instead, DIAMOND passed these operating costs off onto Mr. Monteleone and other aggrieved employees. At all relevant times, Mr. Monteleone did not earn at least two (2) times the minimum wage.

Thus, DIAMOND had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Monteleone 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).

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.” DIAMOND, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Monteleone’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Monteleone 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. Monteleone, 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 DIAMOND for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Monteleone 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:

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

Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

Sairah Budhwani

Copy: SCHELL & KAMPETER, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

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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 **April 23, 2024**, 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 ☒ a true copy thereof ☒ to interested parties as follows ☐ as stated on the attached service list:

John P. Nordlund
Sarah Boxer
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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 ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via OneLegal 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 **April 23, 2024**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature