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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF KERN**

12 GUILLERMO MARTINEZ AGUILAR,
13 individually, and on behalf of all other
14 aggrieved employees,

15 Plaintiff,

16 v.

17 M.N.SH., INC., a California corporation;
18 and DOES 1 through 50, inclusive,

19 Defendants.
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Case No.: BCV-24-100610

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

[California Labor Code § 2698 et seq.]

1 Plaintiff Guillermo Martinez Aguilar (“Plaintiff”) brings this representative action, individually
2 and on behalf of all other aggrieved employees, to recover civil penalties relating to systematic
3 violations of California wage and hour laws by M.N.SH., Inc. (“Del Taco” or “Defendant”). Plaintiff
4 makes the following allegations on information and belief, except as to allegations pertaining to
5 Plaintiff individually, which are based on his personal knowledge.

6 **INTRODUCTION**

7 1. Defendant does business as Del Taco, and owns and operates one or more Del Taco
8 restaurants located in Kern County and in the State of California.

9 2. In an effort to conserve labor costs, and thereby maximize profits, Defendant has
10 implemented policies and practices that have resulted in systematic violations of California’s wage and
11 hour laws.

12 3. For example, Defendant has implemented unlawful policies with respect to meal and
13 rest breaks. Defendant requires its non-exempt employees, who are informed that the needs of the
14 restaurant and its patrons take top priority, to work through meal and rest breaks, to take untimely meal
15 periods and to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees
16 have been denied the ability to take meal and rest breaks that they were and are legally entitled to take.
17 In fact, Defendant unlawfully requires aggrieved employees to take illegal on-duty meal periods.

18 4. Moreover, Defendant has uniformly failed to pay Plaintiff and other aggrieved
19 employees proper overtime wages and minimum wages due to the fact that it has willfully turned a
20 blind eye to off-the-clock work that Plaintiff and other aggrieved employees perform as a direct
21 consequence of Defendant’s understaffing and imposition of an unreasonable workload.

22 5. Defendant also failed to pay timely wages to current and former employees and has
23 failed to maintain required employee records and provide accurate, itemized wage statements.

24 **JURISDICTION AND VENUE**

25 6. The Superior Court of the State of California has jurisdiction in this matter because
26 Defendant is licensed to do business under the laws of the State of California and does business in the
27 State of California. No federal question is at issue because Plaintiff’s claims are based solely on
28 California law.

7. Venue is proper in this judicial district and the County of Kern because Defendant operates a Del Taco Mexican-American food restaurant located in Bakersfield, in the County of Kern. Plaintiff worked at Defendant's Bakersfield located at 35145 Merie Haggard Drive, Bakersfield, California, located in the County of Kern. Plaintiff was employed from February of 2022 through November of 2023. The other aggrieved employees also worked for Defendant at its restaurants located in the State of California.

THE PARTIES

8. During the statute of limitations period, Plaintiff was employed by Defendant as a Line Cook at its location in Bakersfield, California.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of California. Defendant operates one or more Del Taco casual dining fast food restaurants in Bakersfield and other locations in the State of California.

10. At all relevant times herein, Defendants were the joint employers of Plaintiff and the other aggrieved employees. Defendants were the alter egos, divisions, affiliates, integrated enterprises, joint employers, integrated enterprise, affiliates, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by its or their co-Defendants, and each was the alter ego of the other. Moreover, at all material times there has been extensive interrelation of operations, common management, centralized control of labor relations with respect to Plaintiff and the other aggrieved employees, and common ownership or financial control between all Defendants.

11. Plaintiff is informed and believes, and based thereon alleges, in all respects pertinent to this action, Defendants jointly employed Plaintiff and the other aggrieved employees, and as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and as joint employers are jointly liable for the violations as alleged herein.

12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is informed

1 and believes, and thereon alleges, that each defendant designated as a DOE is in some manner highly
2 responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees’
3 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
4 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
5 capacities of such DOE defendants when ascertained.

6 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

7 13. On December 8, 2023, Plaintiff gave written notice by certified mail pursuant to
8 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
9 (“LWDA”) and Defendant, of the specific provisions of the California Labor Code and IWC Wage
10 Order alleged to have been violated, including the facts and theories to support the alleged violations.
11 Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than sixty-five
12 (65) days from the December 8, 2023, postmark date of his written notice before filing this action,
13 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
14 commence a representative action under the California Private Attorneys General Act of 2004
15 (“PAGA”).

16 14. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
17 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
18 non-exempt employees of Defendant who are California citizens and performed work for Defendant in
19 the State of California at any time within the period beginning one (1) year prior to the December 8,
20 2023 notice Plaintiff provided to the LWDA and Defendant, and ending at the time this action proceeds
21 to final judgment (“statute of limitations period”).

22 **FACTUAL ALLEGATIONS**

23 **Failure to Provide Required Meal Periods**

24 **[Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order]**

25 15. During the statute of limitations period, as part of Defendant’s illegal policies and
26 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted or
27 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
28 completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise

1 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under
2 California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

3 16. Defendant has implemented several practices that have caused Plaintiff and aggrieved
4 employees to systematically miss and otherwise take non-compliant meal periods. Defendant
5 systematically understaffs its job sites such that aggrieved employees are given so much work to
6 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
7 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
8 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after
9 working longer than five (5) hours, to perform work during their meal periods, or return to work after
10 taking less than a thirty (30) minute meal period. Moreover, Plaintiff and other aggrieved employees
11 need to secure permission before taking a meal period, which is often denied by supervisors.

12 17. There are also frequent occasions when Plaintiff and aggrieved employees need to
13 perform other duties immediately before the time during which they are legally entitled to take a meal
14 period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their
15 job duties and leave a customer, refuse an order or stop cooking in order to take a meal period.
16 Consequently, Plaintiff and aggrieved employees regularly miss meal periods, take late meal periods,
17 return early from meal periods, and even clock out for meal periods but continue working. Further,
18 Defendant required Plaintiff and the other aggrieved employees to work illegal "on-duty" meal periods.

19 18. Plaintiff and aggrieved employees need to secure permission before taking a meal
20 period. Plaintiff and aggrieved employees often cannot simply stop taking an order from a customer or
21 stop cooking to take their meal period, and their inability to secure coverage frequently causes them to
22 miss and otherwise take non-compliant meal periods.

23 19. Despite the foregoing, Defendant has implemented a policy and practice of actively
24 discouraging the issuance of meal period premium payments, and in the process, Defendant has violated
25 California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to compensate
26 Plaintiff and aggrieved employees who were not authorized and permitted to take a complete, timely,
27 uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay for
28 each workday that such a meal period was not authorized or permitted.

20. Defendant also implemented an unlawful meal period policy by compensating Plaintiff and aggrieved employees for interrupted meal periods only for their actual work time, as opposed to paying them the legally required premium payments for non-compliant meal periods.

Failure to Provide Required Rest Breaks

[Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order]

21. During the statute of limitations period, as part of Defendant's illegal policies and practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize and permit Plaintiff and other aggrieved employees to take rest breaks as required under California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

22. The same or similar policies and practices that deprive Plaintiff and other aggrieved employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to take their first and second and third rest breaks. As alleged herein, Defendant understaffs its restaurants, which creates so much work for Plaintiff and other aggrieved employees that they are frequently unable to take rest breaks. Moreover, Plaintiff and aggrieved employees need to first secure permission before taking a rest break. Plaintiff and aggrieved employees often cannot simply stop assisting a customer or stop cooking to take a rest break, and their inability to secure coverage causes them to regularly miss and otherwise take non-compliant rest breaks.

23. Defendant also does not provide adequate training regarding its legal obligations with respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-exempt employees, and often interrupts staff who try to take rest periods. In short, Defendant essentially has a non-existent rest break policy, as there is no guidance or specification as to when Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their shifts.

24. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that a rest break was not provided.

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Failure to Pay Overtime Wages

[Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order]

25. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

26. During the statute of limitations period, Defendant failed to compensate Plaintiff and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not compensating them for this time, unlawful rounding of time worked by Plaintiff and the other aggrieved employees in favor of Defendant, improperly calculating the regular rate of pay based on bonuses, commissions, and other remuneration, and other methods to be discovered.

27. In a short-sighted attempt to maximize profits, Defendant has understaffed its restaurants. Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendant has actual or constructive knowledge of this off-the-clock work and subtly condones it. Plaintiff and other aggrieved employees routinely arrive to work early to check so that they are prepared and ready to begin performing their duties promptly at the start of their shifts, as they must be pursuant to the requirements of Defendant. Defendant knows that Plaintiff and other aggrieved employees perform this work off-the-clock.

28. Defendant has knowingly and willfully refused to perform its obligations to compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of

1 California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

2 **Failure to Pay Minimum Wages**

3 **[Labor Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order]**

4 29. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
5 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
6 period is unlawful.

7 30. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved
8 employees were precisely at California minimum wage. Based on this common practice, Defendant
9 failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by
10 requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such
11 as requiring them to work through meal and rest breaks but not compensating them for this time,
12 unlawful rounding of time worked by Plaintiff and the other aggrieved employees in favor of
13 Defendant, and failing to include this time in all hours worked, and other methods to be discovered.

14 31. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
15 of the applicable IWC Wage Orders. As a proximate result of the aforementioned violations, Plaintiff
16 and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore,
17 pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law,
18 Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to
19 them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

20 **Failure to Timely Pay Wages During Employment**

21 **[Labor Code § 204]**

22 32. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
23 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the
24 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
25 also provides that for all labor performed between the 16th and 26th days of any calendar month,
26 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following
27 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
28 excess of the normal work period shall be paid no later than the payday of the next regular payroll

1 period.

2 33. During the statute of limitations period, Defendant has knowingly and willfully failed
3 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
4 regular payroll period as required by California Labor Code § 204, including but not limited to,
5 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
6 of the regular rate of pay, and for work performed off-the-clock.

7 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

8 **[Labor Code §§ 201, 202 and 203]**

9 34. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay
10 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates
11 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
12 discharge are due and payable immediately.

13 35. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all
14 accrued wages due to an employee no later than 72 hours after the employee quits his or her
15 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
16 which case the employee is entitled to his or her wages at the time of quitting.

17 36. California Labor Code § 203 provides that if an employer willfully fails to pay, in
18 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
19 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
20 employee at the same rate for up to 30 workdays.

21 37. During the statute of limitations period, Defendant has willfully failed to pay accrued
22 wages and other compensation to Plaintiff and other aggrieved employees in accordance with California
23 Labor Code §§ 201 and 202. On information and belief, Defendant does not have sufficient policies to
24 provide Plaintiff and other aggrieved employees with their final paychecks within the timeframes
25 required under California law. Defendant continues to fail to properly compensate other aggrieved
26 employees for all hours worked when due, overtime wages, and compensation for non-compliant meal
27 and rest breaks, Defendant also willfully failed and continues to fail to pay accrued wages and other
28 compensation to Plaintiff and other aggrieved employees in accordance with California Labor Code §§

1 201 and 202.

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Labor Code § 226(a) and § 7 of the applicable IWC Order]**

4 38. During the statute of limitations period, Defendant routinely failed to provide Plaintiff
5 and other aggrieved employees with timely and accurate itemized wage statements. Defendant's pay
6 stubs have violated California Labor Code § 226. Next, Defendant was and is not providing Plaintiff
7 and other aggrieved employees with proper meal periods and rest breaks but intentionally fails to
8 include in their wage statements one (1) additional hour of compensation at their regular rates of pay
9 for each non-compliant meal period or rest break. Moreover, Defendant has failed to pay proper
10 overtime wages to Plaintiff and other aggrieved employees and its wage statements therefore fail to
11 reflect the correct hourly rates worked by Plaintiff and other aggrieved employees.

12 39. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
13 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
14 accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

15 40. Plaintiff and other aggrieved employees suffered injury as a result of the failure of
16 Defendant to provide timely and accurate itemized wage statements because it prevented them from
17 discovering the scope and extent of Defendant's violations of California wage and hour laws, prevented
18 them from being able to accurately determine the gross wages earned, the total hours worked, all
19 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period and
20 the corresponding number of hours worked at each hourly rate and the balance and available amount
21 of sick leave.

22 **Failure to Maintain Required Records**

23 **[Labor Code §§ 226(a); 1174(d); 2810.5; and § 7 of the applicable IWC Order]**

24 41. During the statute of limitations period, as part of Defendant's illegal payroll policies
25 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
26 Defendant knowingly and intentionally failed to maintain records as required under California Labor
27 Code §§ 226(a); 1174(d); 2810.5; and § 7 of the applicable IWC Order, including but not limited to the
28 following records: total daily hours worked by each employee; applicable rates of pay relating to non-

1 discretionary bonuses, including but not limited to, overtime and double-time; all deductions; meal
2 and/or rest periods; time records showing when each employee begins and ends each work period; and
3 accurate itemized statements that reflect all compensation, rates of pay for all compensation paid and
4 remuneration owed and due to them. Defendant had knowledge that it was not providing its non-exempt
5 employees with proper meal and rest periods, but knowingly failed to include in the wage statements
6 one (1) extra hour of compensation for each missed meal and rest period. Defendant also illegally and
7 inaccurately recorded the time in which Plaintiff and other aggrieved employees worked. Finally,
8 Defendant failed to provide and maintain accurate wage statements relating to supplemental Covid-19
9 sick leave. Defendant failed to maintain accurate, itemized wage statements, as alleged above.

10 **Failure To Provide Mandatory Sick Leave**

11 **[Cal. Lab. Code § 246]**

12 42. Pursuant to California Labor Code §246, any employee who works in the State of
13 California and who works more than “30 or more days within a year ... is entitled to be paid sick days
14 ...” Labor Code §246(i) requires an employer to provide an employee with “written notice” that sets
15 for the “amount of sick leave available” on the employee’s wage statement pursuant to Labor Code
16 §226 or “..., in a separate writing provided on the designated pay date with the employee’s payment of
17 wages.”

18 43. Defendant failed to comply with Labor Code Section §246 by not providing Plaintiff
19 and the other aggrieved employees with sick pay. Defendant also failed to comply with Labor Code
20 §246(i) by not providing Plaintiff and the other aggrieved employees with their available sick leave and
21 balance of sick leave. As such, Defendant has violated California Labor Code § 246.

22 **Failure to Pay COVID-19 Supplemental Sick Leave**

23 **[Cal. Lab. Code §§ 246, 248.1, 248.2, 248.6]**

24 44. During the Statute of Limitations Period, Plaintiff is informed and believes from January
25 1, 2021, through the present, Defendant employed 26 or more aggrieved employees.

26 45. Defendant failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave and
27 compensate aggrieved employees at their regular rate of pay for supplemental sick leave, i.e., their
28 highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in violation of

1 California Labor Code § 248.1(b)(3)(A) and §248.6. Defendant also failed to provide COVID-19
2 Supplemental Sick Leave to aggrieved employees in addition to regular sick leave, in violation of
3 California Labor Code § 248.1(b)(2)(D). Defendant also failed to accurately reflect any offset and/or
4 the current amount of COVID-19 Supplemental Sick Leave available to aggrieved employees on their
5 wage statements, in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2, 248.6 and for the
6 reasons provided herein.

7 **Failure to Maintain Required Records**

8 **[Cal. Lab. Code § 2810.5]**

9 46. During the statute of limitations period, as part of Defendant's illegal payroll policies
10 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
11 Defendant knowingly and intentionally failed to maintain records as required under California Labor
12 Code §2801.5, which requires a California employer to provide written notice at the time of hiring of
13 certain employment related information, including but not limited to, the name of the employer,
14 including any "doing business as" names used by the employer, and the physical address of the
15 employer's main office or principal place of business, and a mailing address, if different.

16 47. Defendant failed to comply with California Labor Code § 2810.5 by not listing the
17 correct business entity for whom work will be performed by Plaintiff and the other aggrieved
18 employees.

19 **Failure to Provide Employment Records**

20 **[Labor Code §§ 226 and 1198.5 and § 7 of the applicable IWC Order]**

21 48. California Labor Code §§ 226 and 1198.5 and, § 7 of the applicable IWC wage order
22 require California employers to provide to copies of their personnel files and certain other
23 employment records upon their request.

24 49. On October 17, 2023 and November 22, 2023, Plaintiff, through his counsel of record,
25 requested copies of these records from Defendant. Authorization forms, expressly permitting the
26 disclosure of these records to counsel, signed by Plaintiff, were submitted to Defendant along with
27 the request. Timely responses were not received from Defendants regarding the requests for the
28 payroll records and personnel file.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **[Cal. Lab. Code § 2698 *et seq.*]**

4 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendants)**

5 50. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 49 above.

7 51. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
8 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
9 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
10 was employed by Defendant and one or more of the alleged California Labor Code violations was
11 committed against Plaintiff during the statute of limitations period.

12 52. Plaintiff seeks to recover civil penalties through a representative action permitted by
13 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
14 certification is not required.

15 53. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
16 penalties from Defendant in a representative action for the violations set forth above, including but not
17 limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558,
18 1174, 1194, 2810.5 and for the violations of the applicable IWC Wage Order alleged above.

19 54. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
20 against Defendant for violations of California Labor Code provisions for which a civil penalty is
21 specifically provided, including but not limited to, the following:

22 a. Pursuant to California Labor Code § 210, for violations of California Labor
23 Code § 204, Defendant is subject to a civil penalty in the amount of one
24 hundred dollars (\$100) for the initial violation for each failure to pay each
25 employee, and two hundred dollars (\$200) per employee for violations in
26 subsequent pay periods.

27 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
28 Code § 226(a), Defendant is subject to a civil penalty in the amount of two

1 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
2 period where a violation occurs and one thousand dollars (\$1,000) per
3 aggrieved employee for violations in subsequent pay periods.

4 c. Pursuant to California Labor Code § 1174.5, for violations of California Labor
5 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
6 (\$500).

7 55. California Labor Code § 2699(f) provides that for all California Labor Code violations
8 for which a civil penalty is not specifically provided, the following civil penalties are established: one
9 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
10 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

11 56. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for
12 Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically
13 provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 246, 248.2,
14 248.6, 1197, and 2810.5, and for the violations of the applicable IWC Wage Order alleged above.

15 57. All civil penalties sought and recovered under this action will be allocated as follows:
16 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
17 aggrieved employees.

18 56. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
19 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees and the
22 State of California, prays for relief against Defendant, as follows:

23 1. For civil penalties according to proof;

24 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
25 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
26 attorneys' fees and costs; and

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LAW OFFICE OF SCOTT ERNEST WHEELER



SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

Attorneys for Plaintiff