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of himself and others similarly situated
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**
11

12 JEREMY M. BEATTY, an individual, on
behalf of himself and others similarly situated,
13

14 Plaintiff,

15 v.

16 FST TRANSPORTATION, INC., a Utah
business entity, d/b/a FUENTES AND SONS
17 TRANSPORTATION; FST SERVICES, INC,
a California corporation; and DOES 1 through
18 100, inclusive,

19 Defendants.
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Case No.: CIVSB2402371

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

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Meal Period Liability under Labor Code § 226.7;
4. Rest Break Liability under Labor Code § 226.7;
5. Failure to Provide Accurate Itemized Employee Wage Statements;
6. Failure to Pay All Wages Owed Timely and upon Separation of Employment;
7. Failure to Reimburse Business Expenses;
8. Violation of Labor Code § 1174(d);
9. Failure to Produce Personnel File under Labor Code §§ 226 and 1198.5;
10. Violation of Business & Professions Code §§ 17200, *et seq.*; and
11. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

1 Plaintiff Jeremy Beatty (“Plaintiff” or “Beatty”), on behalf of himself, the State of California,
2 and all others similarly situated, alleges and complains of defendants FST TRANSPORTATION,
3 INC. d/b/a FUENTES AND SONS TRANSPORTATION, a Utah business entity, FST SERVICES,
4 INC., a California corporation, and DOES 1 through 100, inclusive (collectively, “Defendants”),
5 and each of them, as follows:

6 **I. INTRODUCTION**

7 1. This is a class action pursuant to Code of Civil Procedure section 382 on behalf of
8 Plaintiff and the following class: *all current and former hourly paid or non-exempt employees who*
9 *worked for Defendants in the State of California within the longest applicable limitations period*
10 *(the “Class” or “Class Members”).*

11 2. The Judicial Council of California (JCC)’s amended Emergency Rule 9 (effective
12 May 29, 2020) provides: “[n]otwithstanding any other law, the statutes of limitations and repose for
13 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”
14 The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to
15 toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action.
16 The term ‘civil causes of action’ includes special proceedings. (See Code Civ. Proc., §§ 312, 363
17 [‘action,’ as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed ‘as
18 including a special proceeding of a civil nature’)] . . . The rule also applies to statutes of
19 limitations on filing of causes of action in court found in codes other than the Code of Civil
20 Procedure.” Accordingly, the relevant time period for claims under the PAGA discussed herein is
21 one year prior to the date Plaintiff filed his PAGA Notice online with the California Labor and
22 Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants plus
23 the additional time during which the statute of limitations was tolled (pursuant to Emergency Rule
24 9 of the California Rules of Court) and ongoing.

25 3. Throughout the time period involved in this case, Defendants willfully maintained a
26 policy and/or practice of failing to pay all wages, including minimum and overtime wages, for all
27 hours worked; failing to provide compliant duty-free meal periods; failing to authorize and permit
28 compliant duty-free rest breaks; failing to maintain and provide accurate itemized wage statements;

1 failing to produce personnel file upon written request; failing to reimburse business expenses; and
2 failing to pay all wages owed timely and upon separation of employment. Defendants' illegal
3 conduct has also given rise to derivative claims for unfair business practices and violation of the
4 Private Attorneys General Act of 2004 ("PAGA").

5 4. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant to
6 Business and Professions Code sections 17200 through 17208, also seeks all monies owed but
7 withheld and retained by Defendants to which Plaintiff and Class Members are entitled. Plaintiff
8 seeks an order by the Court awarding restitution, injunctive relief, and all other legal and equitable
9 relief allowed, plus interest, attorneys' fees and costs.

10 5. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees
11 (the "Aggrieved Employees"), also brings this representative action against Defendants to recover
12 wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled to retain
13 the services of counsel to file this action to protect his interests and those of Aggrieved Employees,
14 and has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code
15 section 2699.

16 6. For purposes of the allegations set forth herein, Class Members, along with
17 Aggrieved Employees comprising the PAGA representative action, are collectively referred to as
18 "Employees" except as otherwise specified.

19 **II. JURISDICTION AND VENUE**

20 7. This Court has jurisdiction over this action pursuant to article VI, section 10 of the
21 California Constitution, which grants the superior court "original jurisdiction in all other causes"
22 except those given by statute to other courts. The statutes under which this action is brought do not
23 specify any other basis for jurisdiction. Further, the aggregate amount in controversy for the
24 proposed class action, including monetary damages, restitution, penalties, injunctive relief, and
25 attorneys' fees, is less than five million dollars (\$5,000,000), exclusive of interest and costs. Plaintiff
26 reserves the right to seek a larger amount based upon new and different information resulting from
27 investigation and discovery.

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8. This Court has jurisdiction over Defendants because Defendants do business in California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

9. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil Procedure section 395.5 because, upon information and belief, Defendants transact business in the State of California, County of San Bernardino.

10. Defendant FST Transportation, Inc. is incorporated in the State of Utah, doing business as Fuentes and Sons Transportation (registered dba) in both Utah and California, with its principal place of business in Utah. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant herein, Defendant FST Transportation, Inc. dba Fuentes and Sons Transportation operated, transacted, and conducted business in San Bernardino County within the State of California. Moreover, during the relevant period, Defendant FST Transportation, Inc. dba Fuentes and Sons Transportation employed Plaintiff and Employees within San Bernardino County and the State of California.

11. Defendant FST Services, Inc. is a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the State of California. Plaintiff is informed and believes, and based thereon alleges, that FST Services, Inc. likewise transacted business using the dba Fuentes and Sons Transportation, and operated, transacted, and conducted business in San Bernardino County, State of California.

12. This case should be classified as complex according to California Rules of Court, Rule 3.400, and assigned to a complex litigation judge and department because it is a class action, will involve substantial documentary evidence and a large number of witnesses, is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve, and will require substantial post-judgment judicial supervision.

III. PARTIES

13. Defendants employed Plaintiff as a non-exempt employee in California and subjected him to the same employment policies and/or practices that affected Employees.

1 14. Plaintiff is informed and believes, and based thereon alleges, that Defendants do
2 business in the State of California and, at all times hereinafter mentioned, were and are employers
3 as defined in and subject to the Labor Code and Industrial Welfare Commission (“IWC”)
4 Occupational Wage Orders. During the relevant period, Defendants employed Plaintiff and
5 Employees within the State of California.

6 15. The true names and capacities, whether individual, corporate, associate, or otherwise,
7 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
8 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
9 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
10 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
11 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
12 the defendants designated hereinafter as DOES when such identities become known.

13 16. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
14 include DOES 1 through 100 identified herein.

15 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
16 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
17 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
18 legally attributable to other Defendants. Plaintiff is further informed and believes, and based thereon
19 alleges, that Defendants are joint employers in that they employed Plaintiff and Employees at the
20 same time and were operating as a joint enterprise and single entity during the relevant time periods.

21 18. California courts have recognized that the definition of “employer” for purposes of
22 enforcement of the California Labor Code goes beyond the concept of traditional employment to
23 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
24 California’s labor laws. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 65.) As such, anyone who directly
25 or indirectly, or through an agent or any other person, engages, suffers, or permits any person to
26 work or exercises control over the wages, hours, or working conditions of any person may be liable
27 for violations of the California Labor Code as to that person.

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19. California law also permits and recognizes the piercing of a corporate veil between sister companies under the single enterprise rule. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512.) The single enterprise rule applies where “there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it.” (*Hasso, supra*, 227 Cal.App.4th at p. 155; *Greenspan, supra*, 191 Cal.App.4th at p. 512.)

20. At all times throughout their employment, Plaintiff and Employees were regularly and consistently subject to the common policies and/or practices utilized by Defendants.

21. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and Employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours, and/or working conditions over Plaintiff and Employees at all relevant times herein, so as to be considered joint employers.

IV. FACTUAL BACKGROUND

Defendants Systematically Violated State Wage and Hour Laws

22. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that there are more than one hundred Class Members employed by Defendants within the State of California during the relevant period. Defendants are trucking transporters specializing in heavy equipment hauling, flatbed truck delivery, and construction hauling in the State of California.

23. Upon information and belief, Plaintiff and Employees are covered by IWC Wage Order No. 9-2001.¹

24. Throughout the applicable period of time, Defendants did not pay Plaintiff and Employees at least the California minimum wage for all hours worked. Defendants did not fully compensate Plaintiff and Employees because they were required to perform pre- and post-shift activities that were off the clock (*i.e.*, open and close jobsite gates), as well as incur unpaid non-productive time (*i.e.*, loading and unloading trucks) and take rest breaks that were not separately

¹ Upon information and belief, Plaintiff alleges that IWC Wage Order No. 9-2001 is applicable. However, Plaintiff reserves the right to amend and/or allege any other applicable Wage Order(s).

1 compensated when payment was on a piece-rate (*i.e.*, mileage) basis. Additionally, Plaintiff and
2 Employees performed work during meal and rest breaks. Thus, Defendants engaged in business
3 practices such that Plaintiff and Employees were not fully compensated for all hours worked.

4 25. Labor Code section 223 makes it unlawful for employers to pay their employees
5 wages lower than required by contract or statute while purporting to pay them legal wages.

6 26. Labor Code section 1197 states the California requirement that employees must be
7 paid at least the minimum wage fixed by the Commission, and any payment of less than the
8 minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving
9 less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount
10 of this minimum wage.” IWC Wage Order No. 9-2001 also obligates employers to pay each
11 employee minimum wages for all hours worked.

12 27. These minimum wage standards apply to each hour employees work for which they
13 are not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an
14 employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not,
15 results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135
16 Cal.App.4th 314, 324.)

17 28. Labor Code section 1194.2 authorizes employees to recover liquidated damages for
18 violations of Labor Code section 1194. Where an employee, like Plaintiff and Employees, is not
19 paid for all hours worked under Labor Code section 1194, the employee may recover minimum
20 wages and liquidated damages. (*Sillah v. Command Int’l Sec. Servs.* (N.D.Cal. 2015) 154 F.Supp.3d
21 891 [holding that employees suing for failure to pay overtime could recover liquidated damages
22 under section 1194.2 if they also showed they were paid less than minimum wage]; accord, *Andrade*
23 *v. Arby’s Rest. Grp., Inc.* (N.D.Cal. Dec. 12, 2016; No. 15-cv-03175 NC) 2016 U.S.Dist.LEXIS
24 172319, at *20-21.)

25 29. Labor Code section 1197.1 authorizes employees who are paid less than the
26 minimum wage fixed by an applicable state or local law, or by an order of the commission a civil
27 penalty, restitution of wages, and liquidated damages as follows: “(1) [f]or any initial violation that
28 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay

1 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same
2 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
3 for which the employee is underpaid regardless of whether the initial violation is intentionally
4 committed.”

5 30. Labor Code section 510 requires an employer to compensate an employee who works
6 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
7 hours worked on the seventh consecutive day no less than one and one-half times the employee’s
8 regular rate of pay. Further, Labor Code section 510 obligates an employer to compensate an
9 employee at no less than twice the regular rate of pay when the employee works more than twelve
10 (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

11 31. Throughout the applicable period of time, Defendants had a policy and/or practice of
12 failing to pay overtime wages to Plaintiff and Employees for all overtime hours they worked. The
13 work times of Plaintiff and Employees have been, and continue to be, greater than eight (8) hours
14 per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff and
15 Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiff and Employees
16 were deprived wages at overtime premium amounts attributable to overtime hours. Moreover, the
17 overtime that was paid was short because Defendants incorrectly calculated the regular rate for
18 purposes of calculating overtime; Defendants failed to include non-discretionary forms of pay in the
19 regular rate calculations for Plaintiff and Employees.

20 32. By their common policy and/or practice of requiring Plaintiff and Employees to work
21 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
22 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
23 provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Order(s).

24 33. Defendants failed to provide Plaintiff and Employees with timely duty-free meal
25 periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 9-2001 require employers to
26 provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first
27 five (5) hours of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
28 [“Accordingly, first meal periods must start after no more than five hours.”].) Moreover, an

1 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
2 minute uninterrupted and duty-free meal period. (*See* Lab. Code, § 512.)

3 34. Defendants denied Plaintiff and Employees meal periods that comply with Labor
4 Code sections 226.7 and 512, and IWC Wage Order No. 9-2001. Plaintiff and Employees suffered
5 late, short, interrupted, and/or missed first and second meal periods. (*See Donohue v. AMN Services,*
6 *LLC* (2021) 11 Cal.5th 58 [the California Supreme Court reversed the Fourth Appellate District and
7 set forth two clear rules: (1) employers are not permitted to round time records when determining if
8 employees are entitled to meal premium pay, and (2) it is the employer’s burden to show that
9 compliant meal periods were provided to employees if the time records show otherwise].) Plaintiff
10 and Employees did not receive compliant meal periods within the first five (5) hours of their work,
11 and did not receive compliant second meal periods when working shifts of ten (10) hours or more.

12 35. Defendants were also obligated but failed to provide Plaintiff and Employees with
13 ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
14 worked as required by Labor Code section 226.7 and IWC Wage Order No. 9-2001. The California
15 Supreme Court held in *Augustus v. ABM Security Services Inc.*, (2016) 2 Cal.5th 257, that employees
16 must be relieved of all duties during rest breaks pursuant to Labor Code section 226.7 and
17 subdivision 12(A) of IWC Wage Order No. 9-2001. The Court found that the Wage Orders and the
18 Labor Code require employers to “relinquish control over how employees spend their time” and
19 “relieve employees of all duties” during employees’ ten-minute rest periods. Plaintiff and
20 Employees did not receive compliant rest breaks.

21 36. Moreover, on days that Plaintiff and Employees were paid on a piece-rate basis,
22 mandated rest breaks and other non-productive recovery periods were not separately compensated
23 and unpaid. (*See, e.g., Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36; *Bluford v.*
24 *Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864).

25 37. In addition to failing to authorize and permit compliant meal and rest breaks, Plaintiff
26 and Employees were not compensated with one (1) hour’s worth of pay at their regular rates of pay
27 when they were not provided with compliant meal and rest breaks in accordance with Labor Code
28 section 226.7, subdivision (b). (*See Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858.)

1 38. Defendants violated Labor Code sections 2800 and 2802 by failing to pay and
2 indemnify Plaintiff and Employees for their necessary business expenditures and losses incurred in
3 direct consequence of the discharge of their duties.

4 39. Labor Code section 203 provides “if an employer willfully fails to pay...any wages
5 of an employee who is discharged or who quits, the wages of the employee shall continue as a
6 penalty...” for up to 30 days. (Lab. Code, § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

7 40. Due to Defendants’ non-compliant policies and/or practices described herein,
8 Plaintiff and Employees whose employment with Defendants concluded were not compensated for,
9 *inter alia*, minimum and overtime wages for all hours worked, and were not paid all meal and rest
10 break premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiff
11 and Employees all wages, whose sums were certain, at the time of termination or within seventy-
12 two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter
13 in violation of Labor Code section 203.

14 41. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person
15 in any employment are due and payable twice during each calendar month, on days designated in
16 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204, subdivision
17 (d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or
18 semimonthly payroll if the wages are paid not more than seven calendar days following the close of
19 the payroll period.” Due to Defendants’ failure to pay Plaintiff and Employees for all hours worked
20 at the legal minimum and overtime rates, Defendants failed to timely pay Plaintiff and Employees
21 within seven (7) days of the close of the payroll period in accordance with Labor Code section 204
22 on a regular and consistent basis.

23 42. Through Labor Code section 210 and the PAGA, and to the extent permitted by law,
24 Plaintiff and Employees are entitled to recover civil penalties for violations of Labor Code section
25 204.

26 43. Plaintiff and Employees were not furnished with accurate itemized wage statements
27 that accurately showed their gross wages earned, net wages earned, premium payments at their
28 regular rates of pay for non-compliant meal and rest breaks, the number of hours worked, all

1 applicable hourly rates and corresponding number of hours worked at each hourly rate in effect
2 during each pay period, the number of piece-rate units earned and applicable piece rates, and other
3 information required by Labor Code section 226, subdivision (a).

4 44. During the relevant period, Defendants knowingly and intentionally failed to provide
5 Plaintiff and Employees with the above-described writing through actions alleged herein in violation
6 of Labor Code section 226. Plaintiff and Employees have been injured by Defendants' intentional
7 violation of Labor Code section 226, subdivision (a), because they were denied both their legal right
8 to receive, and their protected interest in receiving, accurate itemized wage statements.

9 45. In addition, because Defendants failed to provide the accurate and mandated
10 information on the itemized wage statements, Plaintiff and Employees were prevented by
11 Defendants from determining if all hours worked were paid and the extent of the underpayment.
12 Plaintiff had to file this lawsuit and perform computations in order to analyze whether, and to what
13 extent, Plaintiff and Employees suffered underpayment, thereby causing Plaintiff to incur expenses
14 and time lost. Thus, Plaintiff and Employees are owed the greater of all actual damages or fifty
15 dollars (\$50.00) for the initial pay period in which a violation occurs, and one hundred dollars
16 (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate
17 penalty of four thousand dollars (\$4,000.00), as provided for in Labor Code section 226, subdivision
18 (e).

19 46. Moreover, for the violations described above, Plaintiff and Employees may also
20 recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for Defendants'
21 violations of Labor Code section 226, subdivision (a).

22 47. Further, Plaintiff and Employees have been denied their legal right and protected
23 interest in having available at a central location at the plant or establishment where they are
24 employed accurate and complete payroll records showing the hours worked daily by, and the wages
25 paid to, Plaintiff and Employees at those respective locations pursuant to Labor Code section 1174.
26 Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiff and Employees may also recover
27 civil penalties for violation of Labor Code section 1174, subdivision (d).

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48. Defendants are also in violation of Labor Code sections 226, subdivisions (b)-(c), 1198.5, and the applicable IWC Wage Order(s) for failing to comply with written requests to inspect or produce Plaintiff and Employee personnel files. After expiration of the relevant time period(s) to respond, an employer's failure to comply entitles current or former employees to recover penalties from the employer in a civil action.

49. Based on the foregoing, Defendants have also engaged in unlawful and unfair business practices in violation of Business and Professions Code sections 17200, *et seq.*, thereby entitling Plaintiff and Class Members to restitution, disgorgement of profits, or other equitable remedies.

V. CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a proposed class comprised of and defined as follows:

All current and former hourly paid or non-exempt employees who worked for Defendants in the State of California within the longest applicable limitations period (again, the "Class" or "Class Members").

51. Plaintiff reserves the right under California Rule of Court, Rule 3.765, subdivision (b), to amend or modify the class description identified herein with greater specificity or further division into subclasses or limitation to particular issues.

52. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the Class is easily ascertainable.

A. Numerosity

53. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is not practicable. Plaintiff is informed and believes that there are more than one hundred Class Members employed by Defendants within the State of California during the relevant period.

54. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members.

1 **B. Commonality**

2 55. There are questions of law and fact common to the Class that predominate over any
3 questions affecting only individual Class Members. These common questions of law and fact
4 include, without limitation:

5 a. Whether Defendants' failure to pay wages, without abatement or reduction,
6 in accordance with the Labor Code, was willful;

7 b. Whether Defendants had a corporate policy and/or practice of failing to pay
8 Class Members for all hours worked in violation of California law;

9 c. Whether Defendants failed to pay at least the minimum wage to Class
10 Members for all hours worked;

11 d. Whether Defendants required Class Members to work over eight (8) hours
12 per day and/or over forty (40) hours per week and failed to pay the legally required overtime
13 compensation to Class Members;

14 e. Whether Defendants deprived Class Members of legally compliant meal
15 periods and rest breaks;

16 f. Whether Defendants had a corporate policy and/or practice of failing to pay
17 Class Members required premium payments for non-compliant (*e.g.*, short, late, interrupted, and/or
18 missed altogether) meal periods and rest breaks in violation of California law;

19 g. Whether Defendants failed to reimburse Class Members for necessary
20 business-related expenses and costs;

21 h. Whether Defendants failed to timely pay all wages due to Class Members
22 during their employment;

23 i. Whether Defendants failed to pay all wages due to Class Members within
24 the required time upon their discharge or resignation;

25 j. Whether Defendants complied with wage reporting as required by the Labor
26 Code, including, *inter alia*, section 226;

27 k. Whether Defendants kept complete and accurate payroll records as required
28 by the Labor Code, including, *inter alia*, section 1174, subdivision (d);

- 1 l. Whether Defendants failed to produce personnel records as required by the
2 Labor Code, including, *inter alia*, sections 226 and 1198.5;
- 3 m. Whether Defendants' conduct was willful or reckless;
- 4 n. Whether Defendants engaged in unfair business practices in violation of the
5 Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;
- 6 o. Whether Class Members are entitled to compensatory damages pursuant to
7 the Labor Code;
- 8 p. The appropriate amount of damages, restitution, and/or monetary penalties
9 resulting from Defendants' violation of California law;
- 10 q. Whether Class Members are entitled to attorneys' fees and costs; and
- 11 r. Whether Class Members are entitled to interest.

12 **C. Typicality**

13 56. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
14 Members sustained injuries and damages arising out of and caused by Defendants' common course
15 of conduct in violation of laws and regulations that have the force and effect of law and statutes, as
16 alleged herein.

17 **D. Adequacy of Representation**

18 57. Plaintiff will fairly and adequately represent and protect the interests of the Class.
19 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
20 wage and hour class and representative actions, and have the financial resources to litigate the claims
21 at issue.

22 **E. Superiority of Class Action**

23 58. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
25 questions of law and fact common to the Class predominate over any questions affecting only
26 individual members of the Class. Each member of the Class has been damaged and is entitled to
27 recovery by reason of Defendants' policy and/or practice of failing to pay minimum and overtime
28 wages, failing to provide compliant duty-free meal periods and/or pay premiums owed thereon,

1 failing to authorize and permit compliant duty-free rest breaks and/or pay premiums owed thereon,
2 failing to maintain and provide accurate itemized wage statements, failing to produce personnel and
3 payroll records upon written request; failing to reimburse necessary business expenses incurred,
4 failing to pay all wages owed in a timely manner, failing to pay all wages due upon termination
5 and/or resignation, and engaging in unfair business practices.

6 59. Class action treatment will allow those similarly situated persons to litigate their
7 claims in a manner that is most efficient and economical for the parties and the judicial system.
8 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
9 action that would preclude its maintenance as a class action.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(Lab. Code, §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and the Relevant IWC Wage Orders)**

13 **[On Behalf of Plaintiff and the Class against All Defendants]**

14 60. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
15 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
16 forth herein.

17 61. Throughout the period of time applicable to this cause of action, Defendants did not
18 pay Plaintiff and Class Members at least the California minimum wage for all hours worked, thereby
19 violating Labor Code section 1194 and the relevant IWC Wage Order(s), as a result of, but not
20 limited to, Defendants' failure to pay for work performed off the clock, including, *inter alia*, pre-
21 and post-shift, unpaid non-productive time and rest breaks that were not separately compensated
22 when paid on a piece-rate basis, along with work performed during meal and rest periods.

23 62. Defendants' failure to pay Plaintiff and Class Members the minimum wage as
24 required is unlawful and violates Labor Code sections 1182.12, 1194, 1194.2, 1197, and 1197.1. As
25 a result, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum
26 wage compensation, as well as interest, costs, and attorney's fees, and liquidated damages in an
27 amount equal to the wages unlawfully unpaid and interest thereon.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(Lab. Code, §§ 223, 510, and 1198 and the Relevant IWC Wage Orders)**

4 **[On Behalf of Plaintiff and the Class against All Defendants]**

5 63. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
6 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
7 forth herein.

8 64. At all times relevant to this Complaint, Labor Code section 510, subdivision (a), was
9 in effect and provided: “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight
10 hours in one workday and any work in excess of forty hours in any one workweek...shall be
11 compensated at the rate of no less than one and one-half times the regular rate of pay for an
12 employee.”

13 65. At all times relevant to this Complaint, Labor Code section 223 was in effect and
14 makes it unlawful for employers to pay their employees wages lower than required by contract or
15 statute while purporting to pay them legal wages.

16 66. Pursuant to the relevant IWC Wage Order(s), an employee shall not be employed
17 more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless
18 the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours
19 worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek.
20 Further, an employer must compensate an employee at no less than twice the employee’s regular
21 rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8)
22 hours on the seventh consecutive day of work.

23 67. At all times mentioned, Plaintiff and the Class regularly worked shifts that consisted
24 of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and
25 were not paid proper overtime wages for all overtime hours worked as a result of, but not limited
26 to, Defendants’ failure to pay for work performed off the clock, including pre- and post-shift, as
27 well as unpaid non-productive time and rest breaks when paid piece rate, along with work performed
28 during meal and rest breaks. Further, the overtime that was paid to Plaintiff and Class Members was

1 short, as Defendants incorrectly calculated the regular rate of pay for purposes of calculating
2 overtime because Defendants failed to include non-discretionary forms of pay in regular-rate
3 calculations.

4 68. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8) hours
5 per day and/or forty (40) hours per week without properly compensating them overtime wages, as
6 described above, Defendants willfully violated the provisions of Labor Code section 1194.

7 69. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been
8 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such
9 amounts, plus interest and penalties thereon, costs, and attorneys' fees.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 **(Lab. Code, §§ 226.7, 512, and the Relevant IWC Wage Orders)**

13 **[On Behalf of Plaintiff and the Class against All Defendants]**

14 70. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
15 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
16 forth herein.

17 71. Labor Code section 226.7 provides “an employer shall not require an employee to
18 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
19 applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).” Similarly,
20 Labor Code section 512 and the IWC Wage Orders require employers to provide employees with
21 thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work.
22 (*See Brinker, supra*, 53 Cal.4th at p. 1042 [“Accordingly, first meal periods must start after no more
23 than five hours.”].) Moreover, an employee who works more than ten (10) hours per day is entitled
24 to receive a second thirty (30) minute uninterrupted and duty-free meal period. (*See* Lab. Code, §
25 512.)

26 72. Despite these legal requirements, Defendants failed to always provide meal periods
27 that comply with Labor Code sections 226.7, 512, and IWC Wage Order No. 9-2001. Plaintiff and
28 Class Members experienced short, untimely, and interrupted meal periods, and frequently the

1 demands of employee job duties were such that they were prevented from taking a meal period
2 altogether. Having been thus subjected to late, short, interrupted, and missed meal periods, Plaintiff
3 and Class Members did not receive their statutorily mandated meal periods.

4 73. Under Labor Code section 226.7 and the relevant IWC Wage Order(s), Plaintiff and
5 Class Members are entitled to be paid one (1) hour of additional wages at their regular rates of pay
6 for each day they were not provided with all required meal periods. (*See Ferra, supra*, 11 Cal.5th at
7 p. 858.) Defendants failed to pay Plaintiff and Class Members the additional wages to which they
8 were entitled for non-compliant meal periods.

9 74. As a result, Defendants are liable to Plaintiff and each Class Member for one (1) hour
10 of additional wages at their regular rates of pay for each workday a compliant meal period was not
11 provided, in a sum to be proven at trial.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

14 **(Lab. Code, § 226.7 and the Relevant IWC Wage Orders)**

15 **[On Behalf of Plaintiff and the Class against All Defendants]**

16 75. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
17 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
18 forth herein.

19 76. Under the applicable IWC Wage Order(s), an employer must authorize and permit
20 all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours
21 worked. Labor Code section 226.7 provides “an employer shall not require an employee to work
22 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
23 regulation, standard, or order of the Industrial Welfare Commission.”

24 77. Defendants are required by California law to authorize and permit breaks of ten (10)
25 uninterrupted minutes for each four hours of work or major fraction thereof (*i.e.*, more than two
26 hours). That is, the required number of rest breaks is equal to the number of work hours divided by
27 four, and if the work time is not evenly divisible by four, any remainder of two hours or less is
28 rounded down and that which exceeds two hours is rounded up. For example, if a Class Member’s

1 work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the work time is
2 nine hours, the employee is still entitled to only two rest breaks. (There is an exception: if the shift
3 is under three and one-half hours, no rest break is required.) Each failure to authorize rest breaks as
4 so required is itself a violation of California’s rest break laws.

5 78. Despite these legal requirements, Defendants failed to authorize and permit Plaintiff
6 and Class Members to take timely, duty-free rest breaks. Plaintiff and Class Members were subject
7 to policies and/or practices that prevented them from taking legally compliant rest breaks.
8 Defendants did not relieve Plaintiff and Class Members of all duties during their rest breaks and
9 required them to be available to continue working—or, in fact, interrupted them—during their rest
10 breaks. Defendants pressured Class Members to perform their duties in a way that omitted breaks,
11 including, but not limited to, scheduling a heavy workload that made taking breaks extremely
12 difficult, maintaining an informal anti-rest break policy enforced through ridicule or reprimand, and
13 exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the
14 skipping of legally protected breaks. Here, as a companywide practice and in fact, Defendants did
15 not offer Plaintiff and Class Members the opportunity to receive compliant off-duty rest breaks and,
16 thus, “the court may not conclude employees voluntarily chose to skip...breaks.” (*Alberts v. Aurora*
17 *Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 “[i]f an employer fails to provide legally
18 compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those
19 breaks.”); accord, *Brinker, supra*, 53 Cal.4th at p. 1033 “[No issue of waiver ever arises for a rest
20 break that was required by law but never authorized; if a break is not authorized, an employee has
21 no opportunity to decline to take it.”].)

22 79. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the court expressly
23 rejected the employer’s assertion that it could provide an on-duty rest break to employees who
24 worked as security guards and further explained “that employers [must] relinquish any control over
25 how employees spend their break time, and relieve their employees of all duties.” (*Id.* at p. 273.)
26 However, Defendants did not relieve Plaintiff and Class Members of all duties and relinquish control
27 over how Plaintiff and Class Members spend their time.

28 ///

80. Further, even assuming, *arguendo*, that a rest period was authorized, Defendants failed to compensate for rest periods on those days when Plaintiff and Class Members were subject to piece-rate earnings (*i.e.*, weekends), given that Defendants’ piece-rate compensation system did not include any separate compensation for rest periods. (*See Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864, 872 [“under the rule of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323, rest periods must be separately compensated in a piece-rate system.”].)

81. Plaintiff and Class Members were not compensated with one (1) hour's worth of pay at their regular rates of pay when they were not provided with compliant rest breaks in accordance with Labor Code section 226.7, subdivision (b). (*See Ferra, supra*, 11 Cal.5th at p. 858.)

82. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour of additional pay at their regular rates of pay for each workday when a compliant rest break was not provided, in a sum to be proven at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Lab. Code, §§ 226 and 226.3)

[On Behalf of Plaintiff and the Class against All Defendants]

83. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

84. Labor Code section 226, subdivision (a), requires employers, semi-monthly or at the time of each payment of wages, to furnish employees an accurate itemized statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

- 1 (5) net wages earned;
- 2 (6) the inclusive dates of the period for which the employee is paid;
- 3 (7) the name of the employee and only the last four digits of his or her social
- 4 security number or an employee identification number other than a social security number;
- 5 (8) the name and address of the legal entity that is the employer...; and
- 6 (9) all applicable hourly rates in effect during the pay period and the
- 7 corresponding number of hours worked at each hourly rate by the employee....

8 85. During the relevant time period, due to Defendants' failure to pay Plaintiff and Class

9 Members meal and rest break premiums at the regular rates of pay thereon, along with the failure to

10 pay minimum and overtime wages, the wage statements issued by Defendants, at a minimum, do

11 not indicate the correct amount of gross wages earned, the correct total hours worked, the correct

12 net wages earned, the piece rate units and piece rate earnings, and the applicable and/or correct

13 hourly rates in effect and the corresponding number of hours worked at each hourly rate in violation

14 of Labor Code section 226, subdivisions (a)(1), (2), (3), (5), and (9). Moreover, there is a standalone

15 violation of the Labor Code section 226, subdivision (a)(8), to the extent the correct employer entity

16 name is not stated on the Plaintiff's and Class Members' itemized wage statements.

17 86. An employee suffering injury as a result of a knowing and intentional failure by an

18 employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater

19 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs

20 and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not

21 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of

22 costs and reasonable attorneys' fees.

23 87. The absence of accurate information on their wage statements has delayed challenge

24 to Defendants' unlawful pay practices, requires discovery and mathematical computations to

25 determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct

26 time and pay records, and led to submission of inaccurate information about wages and amounts

27 deducted from wages to state and federal governmental agencies. Plaintiff would not have had to

28 engage in these efforts and incur these costs had Defendants provided accurate wage statements.

1 This also delayed Plaintiff's ability to demand and recover the underpayment of wages from
2 Defendants.

3 88. Thus, Plaintiff and Class Members have been injured by Defendants' violation of
4 Labor Code section 226, subdivision (a), because they were denied both their legal right to receive,
5 and their protected interest in receiving, accurate itemized wage statements.

6 89. Plaintiff and Class Members are thus entitled to recover from Defendants the greater
7 of their actual damages caused by Defendants' failure to comply with Labor Code section 226,
8 subdivision (a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per
9 employee pursuant to Labor Code section 226, subdivision (e), and any other allowable penalties
10 including those pursuant to Labor Code section 226.3.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**

13 **AND UPON SEPARATION OF EMPLOYMENT**

14 **(Lab. Code, §§ 201, 202, 203, 204, and 210)**

15 **[On Behalf of Plaintiff and the Class against All Defendants]**

16 90. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
17 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
18 forth herein.

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

25 92. Labor Code section 203 provides that if an employer willfully fails to pay
26 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
27 employer is liable for penalties in the form of continued compensation up to thirty (30) days.

28 ///

1 93. As alleged herein and above, Defendants' failure to pay wages was willful in that
2 Defendants knew wages were owed to Plaintiff and Class Members, but failed to pay said wages, at
3 the time of termination, or within 72 hours of resignation, thus entitling Plaintiff and Class Members
4 to penalties under Labor Code section 203, which provides that an employee's wages shall continue
5 as a penalty until paid for a period of up to thirty (30) days from the time they were due.

6 94. Labor Code section 204 requires that all wages earned by any person in any
7 employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages
8 due upon termination of an employee, are due and payable between the 16th and the 26th day of the
9 month during which the labor was performed, and that all wages earned by any person in any
10 employment between the 16th and the last day, inclusive, of any calendar month, other than those
11 wages due upon termination of an employee, are due and payable between the 1st and 10th day of
12 the following month. Section 204 also requires that all wages earned for labor in excess of the normal
13 work period shall be paid no later than the payday for the next regular payroll period.

14 95. The requirements of Labor Code section 204 shall be deemed satisfied by the
15 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
16 seven calendar days following the close of the payroll period when the wages were earned.

17 96. During the relevant time period, Defendants failed to pay Plaintiff and Class
18 Members all wages due to them within the time period specified by Labor Code section 204
19 including, but not limited to minimum and overtime wages, along with meal and rest break
20 premiums.

21 97. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
22 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
23 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
24 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
25 unlawfully withheld.

26 98. Pursuant to Labor Code sections 218.5 and 218.6, along with Civil Code sections
27 3287, subdivision (b), and 3289, Plaintiff requests that the Court award reasonable attorneys' fees
28 and the costs incurred by them in this action, along with pre-judgment interest on all amounts

1 recovered herein, as well as any statutory penalties Defendants may owe under the California Labor
2 Code and/or any other statute.

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

5 **(Lab. Code, §§ 2800 and 2802)**

6 **[On Behalf of Plaintiff and the Class against All Defendants]**

7 99. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference
8 all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged
9 herein.

10 100. Labor Code sections 2800 and 2802 provide that an employer shall indemnify his or
11 her employee for all necessary expenditures or losses incurred by the employee in direct
12 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
13 employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
14 them to be unlawful.

15 101. Defendants required Plaintiff and Class Members to pay for necessary business
16 expenses, including but not limited to, paying for their own lodging and meals when driving out-of-
17 town, incurred for business-related purposes. Expenses were incurred as a direct consequence of
18 Plaintiff's and Class Members' work duties and at the direction of Defendants.

19 102. Although Plaintiff and Class Members were required to incur costs, including
20 lodging and meals, for work purposes, Plaintiff and Class Members were not provided
21 reimbursement for those business-related expenses. California law prohibits an employer from
22 failing to indemnify business expenses or losses incurred by employees.

23 **EIGHTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 1174, SUBDIVISION (d)**

25 **[On Behalf of Plaintiff and the Class against All Defendants]**

26 103. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
27 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
28 forth herein.

104. Pursuant to Labor Code section 1174, subdivision (d), an employer shall keep 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 employees employed at, the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the Commission, but in any case, shall be kept on file for not less than three years.

105. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiff and Class Members.

106. As a result of Defendants' violation of Labor Code section 1174, subdivision (d), Plaintiff and Class Members have suffered injury and damage to their statutorily protected rights.

107. More specifically, Plaintiff and Class Members have been injured by Defendants' intentional and willful violation of Labor Code section 1174, subdivision (d), because they were denied both their legal right and protected interest in having available, accurate, and complete payroll records pursuant to Labor Code section 1174, subdivision (d).

NINTH CAUSE OF ACTION

FAILURE TO COMPLY WITH REQUEST TO INSPECT OR COPY RECORDS

(Lab. Code, §§ 226 & 1198.5, and IWC Wage Order No. 9-2001)

[On Behalf of Plaintiff and the Class against All Defendants]

108. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

109. Labor Code section 226, subdivision (b), requires Defendants to permit current and former employees to inspect or copy payroll records pertaining to that current or former employee. An employer who receives a written or oral request from a current or former employee to inspect or copy his or her payroll records shall comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request. A failure by an employer to permit a current or former employee to inspect or copy his or her payroll records within the aforementioned

1 twenty-one (21) calendar day period entitles the current or former employee to recover a penalty
2 from the employer in a civil action before a court of competent jurisdiction. (*See* Lab. Code, §§ 226,
3 subds. (c) & (f).)

4 110. Labor Code section 1198.5 requires that employers, like Defendants, allow current
5 and former employees access to their personnel files and records that relate to the employee's
6 performance or to any grievance concerning the employee. Inspections must be allowed at
7 reasonable time and intervals. To facilitate the inspection, employers must do one of the following:
8 (1) keep a copy of each employee's personnel records at the place where the employee reports to
9 work; (2) make the personnel records available at the place where the employee reports to work
10 within a reasonable amount of time following the employee's request; or (3) permit the employee
11 to inspect the records at the location where they are stored with no loss of compensation to the
12 employee. (*See* Lab. Code, § 1198.5.)

13 111. Subdivision 7 of IWC Wage Order No. 9-2001 also states that all required
14 employment records shall be in the English language and in ink or other indelible form, properly
15 dated, showing month, day, and year and shall be kept on file by the employer for at least three (3)
16 years at the place of employment or at a central location within the State of California. An
17 employee's records shall be available for inspection by the employee upon reasonable request. (*See*
18 IWC Wage Order No. 9-2001, subd. 7.)

19 112. On July 5, 2023, Plaintiff made a written request, through his attorneys, for his
20 complete employment records from Defendants, including, but not limited to: pay stubs/wage
21 statements; timecards/timekeeping records; work schedules; work assignments; employee
22 handbook(s); applicable wage and hour policies (including meal and rest breaks, vacation/paid time
23 off, sick days, business expense reimbursements, bonuses, etc.); employment application;
24 employment termination documents; background check authorizations; all written agreements
25 signed by Plaintiff (including arbitration(s), severance(s)/release(s), meal period waiver(s),
26 acknowledgement(s), receipt(s), etc.); notice to employee forms under Labor Code section 2810.5;
27 any collective bargaining agreement(s); and other documents constituting his personnel file. After
28

1 mailing said correspondence and expiration of the respective applicable deadlines by which to
2 respond, Defendants failed to produce the required documents as required by law.

3 113. Under Labor Code section 226, subdivisions (e) and (f), based on Defendants'
4 conduct as herein alleged, Plaintiff and Class Members are entitled to: (a) fifty dollars (\$50) for the
5 initial pay period in which a wage and hour statement violation occurred, and one hundred dollars
6 (\$100) per employee for each violation in the subsequent pay periods, not exceeding an aggregate
7 penalty of four thousand dollars (\$4,000); (b) an additional seven hundred and fifty dollars (\$750)
8 penalty for Defendants' failure to allow Plaintiff and Class Members to timely inspect and copy
9 pertinent records under Labor Code section 1198.5; and (c) injunctive relief to ensure Defendants
10 comply with a lawful request to provide personnel records, copies of signed documents, and wage
11 and hour statements in compliance with Labor Code section 226, 1198.5, and IWC Wage Order No.
12 9-2001.

13 **TENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION LAW VIOLATIONS**

15 **(Bus. & Prof. Code, §§ 17200, *et seq.*)**

16 **[On Behalf of Plaintiff and the Class against All Defendants]**

17 114. Plaintiff, on behalf of himself and the Class, realleges and incorporates by reference
18 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
19 forth herein.

20 115. California's Unfair Competition Law ("UCL"), Business and Professions Code
21 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
22 and Professions Code section 17204 allows "any person who has suffered injury in fact and has lost
23 money or property" to prosecute a civil action for violation of the UCL. Such a person may bring
24 such an action on behalf of himself or herself and others similarly situated who are affected by the
25 unlawful, unfair, or fraudulent business practice.

26 116. Labor Code section 90.5, subdivision (a), states that it is the public policy of
27 California to vigorously enforce minimum labor standards in order to ensure employees are not
28 required to work under substandard and unlawful conditions, and to protect employers who comply

1 with the law from those who attempt to gain competitive advantage at the expense of their workers
2 by failing to comply with minimum labor standards.

3 117. A violation of Business and Professions Code sections 17200, *et seq.* may be
4 predicated upon the violation of any state or federal law. Defendants' policies and/or practices have
5 violated state law in at least the following respects:

6 (a) Requiring Plaintiff and Class Members to work without paying them the
7 minimum wage for all hours worked in violation of Labor Code sections 1182.12, 1194, 1194.2,
8 1197, and 1197.1, and applicable IWC Wage Order(s);

9 (b) Requiring Plaintiff and Class Members to work overtime without paying
10 them the proper compensation in violation of Labor Code sections 510 and 1198, and applicable
11 IWC Wage Order(s);

12 (c) Failing to provide compliant duty-free meal periods to Plaintiff and Class
13 Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiff and Class
14 Members in violation of Labor Code sections 226.7 and 512, and applicable IWC Wage Order(s);

15 (d) Failing to reimburse Plaintiff and Class Members for necessary business
16 expenses and losses incurred in performing their job duties, in violation of Labor Code sections
17 2800 and 2802;

18 (e) Failing to timely pay all wages to Plaintiff and Class Members during their
19 employment and upon separation of employment, in violation of Labor Code sections 201, 202, 203,
20 204, and 210;

21 (f) Failing to maintain and provide Plaintiff and Class Members with accurate
22 itemized wage statements, in violation of Labor Code sections 226, subdivision (a), and 1174; and

23 (g) Failing to produce to Plaintiff and Class Members their personnel file records
24 upon reasonable written request, in violation of Labor Code sections 226, 1198.5, and applicable
25 IWC Wage Order(s).

26 Thus, Defendants engaged in unlawful competition in violation of Business and Professions Code
27 sections 17200, *et seq.* by violating, *inter alia*, Labor Code sections 201, 202, 203, 204, 210, 218.5,
28

1 218.6, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
2 1197.1, 1198, 1198.5, 2800, and 2802, and applicable IWC Wage Order(s).

3 118. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff
4 and Class Members have suffered economic injuries because Defendants' conduct has damaged
5 Plaintiff and Class Members by, *inter alia*, wrongfully denying them all wages, including minimum
6 and overtime wages, failing to pay all meal and rest breaks premiums at the regular rate of pay, and
7 neglecting to reimburse necessary business expenses, along with the corresponding interest, in a
8 timely manner and upon separation, and while supplying them inaccurate and misleading wage
9 statements. Such conduct is substantially injurious to Plaintiff and Class Members.

10 119. Additionally, Defendants intentionally avoided paying Plaintiff and Class Members
11 wages and monies, thereby creating for Defendants an artificially lower cost of doing business in
12 order to undercut their competitors and establish a greater foothold in the marketplace. Through
13 their actions alleged herein, Defendants have engaged in unfair competition within the meaning of
14 section 17200 of the Business and Professions Code.

15 120. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
16 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to Business and
17 Professions Code sections 17203 and 17208. Defendants should be required to disgorge all the
18 profits and gains they have reaped and restore such profits and gains to Plaintiff and Class Members,
19 from whom they were unlawfully taken.

20 121. Defendants' course of conduct, acts, and practices in violation of California laws
21 mentioned above constitute independent violations of Business and Professions Code sections
22 17200, *et seq.*

23 122. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions
24 of the Labor Code pursuant to Business and Professions Code section 17202.

25 123. Plaintiff has assumed the responsibility of enforcement of the laws and public
26 policies specified herein by suing on behalf of himself and Class Members previously or presently
27 employed by Defendants in California. Plaintiff's success in this action will enforce important rights
28 affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the

1 public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant
2 to Code of Civil Procedure section 1021.5.

3 **ELEVENTH CAUSE OF ACTION**

4 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

5 **(Lab. Code, §§ 2698, *et seq.*)**

6 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

7 124. Plaintiff, on behalf of himself and Aggrieved Employees, realleges and incorporates
8 by reference all of the allegations contained in the preceding paragraphs of this Complaint as though
9 fully set forth herein.

10 125. Plaintiff, on behalf of himself and Aggrieved Employees, brings this representative
11 action against Defendants to recover wages and penalties pursuant to the PAGA, Labor Code
12 sections 2698, *et seq.*

13 126. Based on the above allegations, incorporated herein by reference, Defendants have
14 violated Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 226, 226.3, 226.7, 510,
15 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, and 2802,
16 as well as applicable IWC Wage Order(s).

17 127. Under Labor Code sections 2699, subdivision (f)(2), and 2699.5, Plaintiff and
18 Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject
19 to the following formula:

20 \$100 for the initial violation per employee per pay period; and

21 \$200 for each subsequent violation per employee per pay period.

22 These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent
23 (25%) to the affected employees.

24 128. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
25 itemized wage statements in compliance with Labor Code section 226, subdivision (a). Plaintiff
26 seeks separate PAGA penalties for Defendants' violations of Labor Code section 226, subdivisions
27 (a) and (e). (*Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot*
28 *U.S.A.* (E.D.Cal. Dec. 11, 2017; No. 2:12-cv-02499 JAM-CKD) 2017 U.S.Dist.LEXIS 204493, at

1 *5 [finding after *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to *Home*
2 *Depot*] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’
3 derivative claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read
4 to grant summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
5 226(a).”].) For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
6 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
7 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
8 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one
9 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
10 employer fails to provide the employee a wage deduction statement or fails to keep the required
11 records in subdivision (a) of Section 226.” Accordingly, through the PAGA and to the extent
12 permitted by law Plaintiff and Aggrieved Employees are entitled to recover penalties for violations
13 of Labor Code section 226.3 and seek the default PAGA penalties for each of Defendants’ numerous
14 violations of Labor Code section 226, subdivision (a).

15 129. Labor Code section 210 provides that “[i]n addition to, and entirely independent and
16 apart from, any other penalty provided in this article, every person who fails to pay the wages of
17 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) [f]or
18 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) [f]or
19 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
20 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” As a result
21 of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are also
22 entitled to recover penalties under Labor Code section 210 through the PAGA.

23 130. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
24 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally committed,
25 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
26 is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
27 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
28 underpaid regardless of whether the initial violation is intentionally committed.” Accordingly,

1 through the PAGA and to the extent permitted by law, Plaintiff and Aggrieved Employees are
2 entitled to recover pursuant to Labor Code section 1197.1.

3 131. On January 3, 2024, Plaintiff filed his PAGA Notice with the LWDA, paid the filing
4 fee, and sent a letter by certified mail to Defendants FST Transportation, Inc. d/b/a Fuentes and Sons
5 Transportation and FST Services, Inc., setting forth the facts and theories of the violations alleged
6 against Defendants, as prescribed by Labor Code sections 2698, *et seq.* Pursuant to Labor Code
7 section 2699.3, subdivision (a)(2)(A), no notice was received by Plaintiff from the LWDA
8 evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of
9 the PAGA Notice. Plaintiff is therefore entitled to commence and proceed with a civil action
10 pursuant to Labor Code section 2699.

11 132. Plaintiff, as a personal representative of the general public, on behalf of Aggrieved
12 Employees and the State of California, will and does seek to recover any and all penalties for each
13 and every violation shown to exist or to have occurred during the PAGA period, in an amount
14 according to proof, as to those penalties that are otherwise only available to public agency
15 enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75
16 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

17 133. Plaintiff was compelled to retain the services of counsel to file this action to protect
18 his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties
19 owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to
20 recover under Labor Code section 2699, subdivision (g)(1).

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for the following relief:

- 23 1. For an order certifying this action as a class action;
- 24 2. For compensatory damages in the amount of the unpaid minimum wage and overtime
25 compensation for work performed by Plaintiff and Class Members, as may be proven;
- 26 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
27 thereon, as may be proven;

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1 4. For compensatory damages in the amount of the regular rate of pay for Plaintiff and
2 Class Members for each non-compliant meal period for which premium pay was deficient, as may
3 be proven;

4 5. For compensatory damages in the amount of the regular rate of pay for Plaintiff and
5 Class Members for each day of non-compliant rest breaks for which premium pay was deficient, as
6 may be proven;

7 6. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members
8 who quit or were fired, in an amount equal to their daily wage multiplied by thirty (30) days, as may
9 be proven;

10 7. For actual damages and/or penalties pursuant to Labor Code section 226, subdivision
11 (e) for Plaintiff and Class Members, as may be proven;

12 8. For reimbursement of business expenditures, as may be proven;

13 9. For restitution for unfair competition pursuant to the Business and Professions Code
14 sections 17200, *et seq.*, including disgorgement of profits, as may be proven;

15 10. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00 for
16 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the
17 representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant to the
18 PAGA;

19 11. For all civil penalties available under Labor Code section 210 and the PAGA;

20 12. For all civil penalties available under Labor Code section 226.3 and the PAGA;

21 13. For all civil penalties available under Labor Code section 1174.5 and the PAGA;

22 14. For all civil penalties available under Labor Code section 1197.1 and the PAGA;

23 15. For all civil penalties available under Labor Code section 1198.5 and the PAGA;

24 16. For an order enjoining Defendants and their agents, servants, and employees, and all
25 persons acting under, in concert with, or for them, from acting in derogation of any rights or duties
26 adumbrated in this complaint;

27 17. For an award of pre-judgment and post-judgment interest;

28 18. For an award providing for the payment of the costs of this suit;

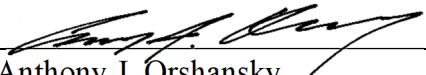
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19. For an award of attorneys' fees, to the extent provided by law; and
20. For such other and further relief as the Court may deem proper and just.

Dated: March 11, 2024

Respectfully submitted,

COUNSELONE, PC

By 
Anthony J. Orshansky
Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees