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individually and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF YOLO

JUAN PABLO BERMUDEZ LEON,
individually and on behalf of all others
similarly situated,

PLAINTIFF,

v.

CREW WINE COMPANY, LLC, a California
limited liability company; and DOES 1
through 50, inclusive,

DEFENDANTS.

CASE NO.: CV2024-0987

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT**

- 1) FAILURE TO PAY OVERTIME (LABOR CODE §§ 510, 1198)
- 2) FAILURE TO PROVIDE MEAL PERIODS AND/OR PAY MEAL PERIOD PREMIUMS (LABOR CODE § 226.7, 512)
- 3) FAILURE TO AUTHORIZE AND PERMIT REST BREAKS AND/OR PAY REST BREAK PREMIUMS (LABOR CODE § 226.7)
- 4) FAILURE TO TIMELY PAY FINAL WAGES (LABOR CODE §§ 201-203)
- 5) FAILURE TO PROVIDE COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS (LABOR CODE § 226)
- 6) UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204)
- 7) PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698 – 2699.5)

DEMAND FOR JURY TRIAL

1 Plaintiff JUAN PABLO BERMUDEZ LEON (“Plaintiff”), individually, and on behalf of others
2 similarly situated (hereinafter “Class Members”), and as a private attorney general, based upon facts
3 that either have evidentiary support or are likely to have evidentiary support after a reasonable
4 opportunity for further investigation and discovery, complains and hereby alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants CREW WINE COMPANY, LLC, a
7 California limited liability company; and DOES 1 through 50, inclusive (hereinafter collectively
8 referred to as “Defendants”) for California Labor Code violations, unfair business practices, and
9 monetary penalties stemming from Defendants’ failure to pay overtime compensation, failure to
10 provide compliant meal periods, failure to authorize and permit compliant rest periods, failure to timely
11 pay final wages, and failure to provide accurate and complete itemized wage statements.

12 2. Plaintiff’s First through Sixth Causes of Action are brought as a class action on behalf of
13 himself and similarly situated current and former employees of Defendants (hereinafter collectively
14 referred to as the “Class” or “Class Members,” as defined more fully in paragraph 20, below) pursuant
15 to Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed
16 the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

17 3. Plaintiff’s Seventh Cause of Action is brought as a representative action on behalf of
18 himself and other current and former non-exempt employees of Defendants in the State of California at
19 any time within the period beginning one (1) year prior to the date of Plaintiff’s PAGA letter to the
20 LWDA and ending at the time this action settles or proceeds to final judgment (hereinafter collectively
21 referred to as “Aggrieved Employees”) pursuant to California Labor Code sections 2698, *et seq.* Plaintiff
22 is an aggrieved employee against whom one or more of the alleged violations occurred. The civil
23 penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be
24 established according to proof at trial.

25 4. The Court has jurisdiction over this action pursuant to the California Constitution, Article
26 VI, section 10, which grants the superior court “original jurisdiction in all other causes” except those
27 given by statute to other courts. The statutes under which this action is brought do not specify any other
28 basis for jurisdiction.

5. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of 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 the California courts consistent with traditional notions of fair play and substantial justice.

6. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, County of Yolo.

PARTIES

7. Plaintiff is a resident of the State of California. At all times relevant to this action, Plaintiff was employed by Defendants in the County of Yolo, State of California as an hourly, non-exempt employee. During his employment, Plaintiff maintained and operated bottling machinery at Defendants' winery in Zamora, California..

8. Defendant CREW WINE COMPANY, LLC is, and at all times herein mentioned was, a limited liability company organized and existing under the laws of the State of California, and registered to do business in the State of California.

9. Plaintiff is informed and believes that Defendant CREW WINE COMPANY, LLC is a winery and vineyard and operates under the names “Matchbook Wine Company” and “Matchbook Wines.”

10. Plaintiff is informed and believes that according to publicly released data, Defendant CREW WINE COMPANY, LLC received at least two (2) federal Paycheck Protection Program (“PPP”) loans totaling approximately \$1,700,000.¹ According to publicly released data, the full amount of these loans to Defendant, including accrued interest, has been forgiven.

11. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore, sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, companies, or corporations. Plaintiff is informed and believes, and thereon alleges, that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at all times

¹ See, <https://projects.propublica.org/coronavirus/bailouts/loans/crew-wine-company-llc-3773117107> and <https://projects.propublica.org/coronavirus/bailouts/loans/crew-wine-company-llc-5386518300>

1 mentioned acting within the scope, purpose, consent, knowledge, ratification and authorization of such
2 agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their
3 true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that
4 each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein
5 alleged, and that Plaintiff's damages as herein alleged were proximately caused by its conduct.

6 12. Defendants CREW WINE COMPANY, LLC and DOES 1 thorough 50, inclusive, are
7 collectively referred to herein as "Defendants."

8 13. Defendants are and at all times herein mentioned were, (a) conducting business in the
9 County of Yolo, State of California, and (b) the employer of Plaintiff consistent with the California
10 Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s).

11 14. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected the
12 working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class, and
13 the Aggrieved Employees so as to make each of said Defendants employers and employers jointly liable
14 under the statutory provisions set forth herein.

15 15. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this
16 action, Defendants were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint
17 employers, subsidiaries, successors, sister companies, parents, principals, related entities, co-
18 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each
19 other. Each defendant was dominated by his, her, or its codefendants, and each was the alter ego of the
20 other.

21 16. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in all
22 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
23 plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to
24 the other Defendants.

25 17. Plaintiff is informed and believes, and based thereon alleges, that in perpetrating the acts
26 and omissions alleged herein, Defendants, and each of them, acted pursuant to, and in furtherance of,
27 their policies and practices of not paying Plaintiff, the Class, and the Aggrieved Employees all wages
28 earned and due, through methods and schemes which include, but are not limited to: failing to pay

1 overtime; failing to provide meal periods; failing to authorize rest breaks; failing to properly maintain
2 records; failing to provide accurate itemized statements for each pay period; failing to timely pay final
3 wages; failing to pay timely wages during employment; and requiring, permitting, or suffering the
4 employees to work off the clock, in violation of the California Labor Code (“Labor Code”) and
5 applicable IWC Wage Order(s).

6 18. Plaintiff is informed and believes, and based thereon alleges, that in accordance with
7 Labor Code section 558.1, Defendants, and any person acting on behalf of Defendants, are liable for
8 violating, or causing to violate, any provision regulating any applicable provision of the Labor Code.

9 **CLASS ACTION ALLEGATIONS**

10 19. Plaintiff brings the First through Sixth Causes of Action as a class action on his own
11 behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class
12 certification under Code of Civil Procedure section 382.

13 20. The proposed class is defined as follows: All current and former non-exempt employees
14 of any of the Defendants within the State of California at any time commencing four (4) years preceding
15 the filing of Plaintiff’s original complaint up until the time that notice of the certified class action is
16 provided to the class (hereinafter referred to as the “Class” or “Class Members”).

17 21. Plaintiff reserves the right to establish other subclasses as appropriate.

18 22. The Class is ascertainable and there is a well-defined community of interest in the
19 litigation:

20 a. Numerosity: The Class Members are so numerous that joinder of all Class Members
21 is impracticable. The membership of the entire Class is unknown to Plaintiff at this
22 time; however, the Class is estimated to be over fifty (50) individuals and the identity
23 of such membership is readily ascertainable by inspection of Defendants’ employment
24 records.

25 b. Typicality: Plaintiff’s claims are typical of all other Class Members demonstrated herein.
26 Plaintiff and the Class Members worked as hourly, non-exempt employees for
27 Defendants in California, including at Defendants’ winery and vineyard in Zamora,
28 California. Plaintiff and the other similarly situated Class Members were employed by

Defendants at the same facilities and were subjected to the same policies and practices, and endured similar violations at the hands of Defendants.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class Member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other Class Members. Plaintiff's counsel, the proposed class counsel, is versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs, and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the Class Members who are not named in the complaint anonymity that allows for the vindication of their rights.

23. There are common questions of law and fact as to the Class that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the Class:

- a. Whether Defendants required Plaintiff and the other Class Members to work more than eight (8) hours per day and/or more than forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other Class Members;
- b. Whether Defendants deprived Plaintiff and the other Class Members of meal and/or rest periods or required Plaintiff and the other Class Members to work during meal and/or rest periods without compensation;
- c. Whether Defendants failed to pay meal period premium wages to Plaintiff and the other

Class Members when they were not provided legally compliant meal periods;

d. Whether Defendants failed to pay rest period premium wages to Plaintiff and the other Class Members when they were not authorized and permitted to take legally compliant rest periods;

e. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff and the other Class Members for all hours worked, and for missed, short, late or interrupted meal periods and rest breaks in violation of California law;

f. Whether Defendants failed to pay all wages due to Plaintiff and the other Class Members within the time required upon their discharge or resignation from employment;

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

h. Whether Defendants complied with wage statement reporting as required by the California Labor Code, including section 226;

i. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.* based on their improper withholding of compensation and deduction of wages;

j. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

k. Whether Plaintiff and the other Class Members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

24. Plaintiff is informed and believes that Defendants are owners and operators of wineries and vineyards, and that Defendants do business under the names "Matchbook Wine Company" and "Matchbook Wines." According to Defendants' website, "Our continued success is due to the hard-working crew of passionate wine professionals that make up our winery family."

25. Defendants employed Plaintiff as an hourly, non-exempt employee from approximately December 2010 to approximately March 2023.

26. At all relevant times set forth herein, Defendants employed Plaintiff, the Class, and the

1 Aggrieved Employees as hourly-paid or non-exempt employees.

2 27. Throughout the time period involved in this case, Defendants had the authority to hire
3 and terminate Plaintiff, the Class, and the Aggrieved Employees; to directly, or indirectly, control work
4 rules, working conditions, wages, and working hours; and to directly, or indirectly, control the terms of
5 employment of Plaintiff, the Class, and the Aggrieved Employees.

6 28. At all times herein mentioned, Defendants were subject to the Labor Code of the State of
7 California and the applicable IWC Wage Order(s).

8 29. Plaintiff is informed and believes, and thereon alleges, that Defendants engaged in an
9 ongoing and systematic scheme of wage and hour violations against their hourly-paid or non-exempt
10 employees. As set forth in more detail below, Defendants routinely failed to permit Plaintiff, the Class,
11 and the Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of
12 California law, and failed to pay associated meal and rest period premium wages. Defendants also failed
13 to pay Plaintiff, the Class, and Aggrieved Employees overtime pay in accordance with the Labor Code
14 and applicable Wage Order(s), failed to provide accurate itemized wage statements for each pay period,
15 and failed to timely pay all wages owed during and upon termination of employment.

16 30. On information and belief, throughout the time period involved in this case, Defendants
17 have implemented policies and practices which failed to provide Plaintiff, the Class, and the Aggrieved
18 Employees with timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff, the
19 Class, and the Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish
20 control over Plaintiff, the Class, and the Aggrieved Employees during their meal periods, regularly failed
21 to permit Plaintiff, the Class, and the Aggrieved Employees a reasonable opportunity to take their meal
22 periods, and regularly impeded or discouraged Plaintiff, the Class, and the Aggrieved Employees from
23 taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work
24 and/or from taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of
25 work for shifts lasting more than ten (10) hours. For example, when Plaintiff, the Class, and the
26 Aggrieved Employees typically began a shift at 6:00 a.m., they were not provided a meal period before
27 the end of the fifth hour of work.

28 31. On information and belief, throughout the time period involved in this case, Defendants

1 did not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take meal
2 periods under California law. Moreover, on information and belief, Defendants systematically
3 disregarded their own written policies regarding the provision and timing of meal periods for Plaintiff,
4 the Class, and the Aggrieved Employees.

5 32. On information and belief, throughout the time period involved in this case, Defendants
6 failed to pay Plaintiff, the Class, and the Aggrieved Employees premium wages for meal periods that
7 were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should
8 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all meal
9 periods or payment of one additional hour of pay at their regular rate of pay when a meal period was
10 missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to
11 provide legally compliant meal periods to Plaintiff, the Class, and the Aggrieved Employees, and
12 routinely failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees
13 at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.

14 33. On information and belief, throughout the time period involved in this case, Defendants
15 have implemented policies and practices which prohibited Plaintiff, the Class, and the Aggrieved
16 Employees from taking timely and duty-free rest periods. Defendants regularly failed to provide,
17 authorize, and permit Plaintiff, the Class, and the Aggrieved Employees to take full, uninterrupted, off-
18 duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full,
19 uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a
20 good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

21 34. On information and belief, throughout the time period involved in this case, Defendants
22 did not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take rest
23 periods, including third rest breaks, under California law. Moreover, on information and belief,
24 Defendants systematically disregarded their own written policies regarding the provision and timing of
25 rest periods for Plaintiff, the Class, and the Aggrieved Employees. Instead, Defendants' actual policy
26 and practice was to schedule Plaintiff, the Class, and the Aggrieved Employees in a way that regularly
27 prohibited them from taking timely and duty-free rest periods, and to regularly require Plaintiff, the
28 Class, and the Aggrieved Employees to work through their rest periods.

1 35. On information and belief, throughout the time period involved in this case, Defendants
2 failed to pay Plaintiff, the Class, and the Aggrieved Employees premium wages for rest periods that
3 were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should
4 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all rest
5 periods or payment of one additional hour of pay at their regular rate of pay when a rest period was
6 missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to
7 authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest periods,
8 and failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their
9 regular rate of pay when a rest period was missed, short, late and/or interrupted. Although Plaintiff
10 complained about late, interrupted, and missed meal periods, nothing was done by Defendants to address
11 or correct the violations.

12 36. On information and belief, throughout the time period involved in this case, Plaintiff,
13 the Class, and the Aggrieved Employees worked more than eight (8) hours in a day, and/or forty (40)
14 hours in a week.

15 37. On information and belief, throughout the time period involved in this case, Defendants
16 regularly failed to pay all overtime compensation owed to Plaintiff, the Class, and the Aggrieved
17 Employees when they worked in excess of eight (8) hours in a single work day and/or forty (40) hours
18 in a single work week, or in excess of twelve (12) hours in a single work day and/or eighty (80) hours
19 in a single work week. Defendants knew or should have known that Plaintiff, the Class, and the
20 Aggrieved Employees were entitled to receive certain wages for overtime compensation and that they
21 were not receiving wages for overtime compensation.

22 38. On information and belief, throughout the time period involved in this case, Defendants
23 failed to pay overtime to Plaintiff, the Class, and the Aggrieved Employees for all overtime hours
24 worked based on regular rates of pay correctly calculated to include all applicable remuneration,
25 including nondiscretionary annual bonuses.

26 39. On information and belief, throughout the time period involved in this case, Defendants
27 regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon
28 discharge or resignation. Defendants knew or should have known that Plaintiff, the Class, and the

1 Aggrieved Employees were entitled to receive all wages owed to them upon termination within the time
2 permissible under California Labor Code section 202. Plaintiff, the Class, and the Aggrieved Employees
3 did not receive payment of all final wages owed to them upon discharge or resignation, including
4 premium wages within any time permissible under California Labor Code section 202.

5 40. On information and belief, throughout the time period involved in this case, Defendants
6 regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time
7 permissible under California law, including, *inter alia*, California Labor Code section 204. Defendants
8 knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to
9 receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved
10 Employees did not receive payment of all wages, including meal period premiums and rest period
11 premiums, and overtime compensation at the proper rate of pay.

12 41. On information and belief, throughout the time period involved in this case, Defendants
13 regularly failed to provide complete or accurate wage statements to Plaintiff, the Class, and the
14 Aggrieved Employees. Defendants knew or should have known that Plaintiff, the Class, and the
15 Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance
16 with California law, but, in fact, they did not receive complete and accurate wage statements from
17 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours worked,
18 the actual gross wages earned, and premium pay.

19 42. On information and belief, throughout the time period involved in this case, Defendants
20 regularly failed to keep complete or accurate payroll records for Plaintiff, the Class, and the Aggrieved
21 Employees. Defendants knew or should have known that Defendants were required to keep complete
22 and accurate time payroll records for Plaintiff, the Class, and the Aggrieved Employees in accordance
23 with California law, but, in fact, did not keep complete and accurate time and payroll records.

24 43. On information and belief, throughout the time period involved in this case, Defendants
25 regularly failed to maintain accurate records relating to Plaintiff's, the Class's, and the Aggrieved
26 Employees' work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

27 44. On information and belief, throughout the time period involved in this case, Defendants
28 knew or should have known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved

1 Employees pursuant to California law. Defendants had the financial ability to pay such compensation,
2 but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff, the Class,
3 and the Aggrieved Employees that they paid all wages owed to them, all in order to increase Defendants'
4 profits.

5 45. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall
6 limit the right of any wage claimant to "sue directly ... for any wages or penalty due them under this
7 article."

8 **FIRST CAUSE OF ACTION**

9 **(Violation of California Labor Code §§ 510 and 1198)**

10 **(Against All Defendants)**

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

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

17 48. Specifically, the applicable IWC Wage Order(s) provides that Defendants are and were
18 required to pay Plaintiff and the other Class Members employed by Defendants, and working more than
19 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half
20 times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty
21 (40) hours in a workweek.

22 49. The applicable IWC Wage Order(s) further provides that Defendants are and were
23 required to pay Plaintiff and the Class overtime compensation at a rate of two times their regular rate of
24 pay for all hours worked in excess of twelve (12) hours in a day and for all hours worked in excess of
25 eight (8) hours on the seventh day of work in a workweek.

26 50. California Labor Code section 510 codifies the right to overtime compensation at one-
27 and-one-half times the regular rate for hours worked in excess of eight (8) hours in a day or forty (40)
28 hours in a week or for the first eight (8) hours worked on the seventh day of work, and no overtime

1 compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day
2 or in excess of eight (8) hours in a day on the seventh day of work.

3 51. During the relevant time period, Plaintiff and the other Class Members regularly worked
4 in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

5 52. On information and belief, during the relevant time period, Defendants intentionally and
6 willfully failed to pay overtime wages owed to Plaintiff and the other Class Members at the proper rate
7 of pay.

8 53. Defendants' failure to pay Plaintiff and the other Class Members the unpaid balance of
9 overtime compensation, as required by California laws, violates the provisions of California Labor Code
10 sections 510 and 1198, and is therefore unlawful.

11 54. Pursuant to California Labor Code section 1194, Plaintiff and the other Class Members
12 are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

13 **SECOND CAUSE OF ACTION**

14 **(Violation of California Labor Code §§ 226.7 and 512)**

15 **(Against All Defendants)**

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

18 56. At all relevant times, the relevant IWC Wage Order(s) and California Labor Code
19 sections 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by
20 Defendants.

21 57. At all relevant times, California Labor Code section 226.7 provides that no employer
22 shall require an employee to work during any meal or rest period mandated by an applicable order of
23 the California IWC.

24 58. At all relevant times, the applicable IWC Wage Order(s) and California Labor Code
25 section 512(a) provide that an employer may not require, cause or permit an employee to work for a
26 work period of more than five (5) hours per day without providing the employee with a meal period of
27 not less than thirty (30) minutes, except that if the total work period per day of the employee is no more
28 than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

1 59. At all relevant times, California Labor Code section 512(a) further provides that an
2 employer may not require, cause or permit an employee to work for a work period of more than ten (10)
3 hours per day without providing the employee with a second uninterrupted meal period of not less than
4 thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second
5 meal period may be waived by mutual consent of the employer and the employee only if the first meal
6 period was not waived.

7 60. During the relevant time period, Plaintiff and the other Class Members who were
8 scheduled to work for a period of time longer than six (6) hours, and who did not waive their legally-
9 mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours
10 without an uninterrupted meal period of not less than thirty (30) minutes.

11 61. During the relevant time period, Plaintiff and the other Class Members were required to
12 work for periods longer than ten (10) hours without a second uninterrupted meal period of not less than
13 thirty (30) minutes.

14 62. During the relevant time period, Defendants intentionally and willfully required Plaintiff
15 and the other Class Members to miss their meal periods and to take meal periods that were late,
16 shortened, or interrupted, and failed to compensate Plaintiff and the other Class Members the full meal
17 period premium for missed, shortened, late, or interrupted meal periods.

18 63. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
19 Members the full meal period premiums due pursuant to California Labor Code section 226.7.

20 64. Defendants' conduct violates the applicable IWC Wage Order(s) and California Labor
21 Code Sections 226.7 and 512(a).

22 65. Pursuant to the applicable IWC Wage Order(s) and California Labor Code section
23 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one (1)
24 additional hour of pay at the employee's regular rate of compensation for each work day that the meal
25 period was not provided.

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1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.7)**

3 **(Against All Defendants)**

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

6 67. At all times herein set forth, the applicable IWC Wage Order(s) and California Labor
7 Code section 226.7 were applicable to Plaintiff and the other Class Members' employment by
8 Defendants.

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

12 69. At all relevant times, the applicable IWC Wage Order(s) provides that "[e]very employer
13 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
14 middle of each work period" and that the "rest period time shall be based on the total hours worked daily
15 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total
16 daily work time is less than three and one-half (3.5) hours."

17 70. During the relevant time period, Defendants required Plaintiff and other Class Members
18 to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each
19 four (4) hour period worked.

20 71. During the relevant time period, Defendants willfully required Plaintiff and the other
21 Class Members to work during rest periods, failed to allow Plaintiff and the other Class Member to take
22 any rest period and/or failed to authorize and permit Plaintiff and the other Class Members to take
23 uninterrupted, duty-free rest breaks.

24 72. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
25 Members the full rest period premium due pursuant to California Labor Code section 226.7 for work
26 performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class
27 Members from taking uninterrupted rest periods.

28 73. Defendants' conduct violates applicable IWC Wage Order(s) and California Labor Code

1 section 226.7.

2 74. Pursuant to the applicable IWC Wage Order(s) and California Labor Code section
3 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
4 hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period
5 was not provided.

6 **FOURTH CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 201, 202, 203)**

8 **(Against All Defendants)**

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

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

17 77. During the relevant time period, the employment of Plaintiff and many other Class
18 Members with Defendants ended, *i.e.* was terminated by quitting or discharge. Defendants intentionally
19 and willfully failed to pay Plaintiff and other Class Members who are no longer employed by Defendants
20 all of their wages, earned and unpaid, including but not limited to overtime wages, within seventy-two
21 (72) hours of their leaving Defendants' employ.

22 78. Defendants' failure to pay Plaintiff and other Class Members who are no longer
23 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
24 Defendants' employ, is in violation of California Labor Code sections 201 and 202.

25 79. California Labor Code section 203 provides that if an employer willfully fails to pay
26 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
27 as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but
28 the wages shall not continue for more than thirty (30) days.

80. Plaintiff and other Class Members who are no longer employed by Defendants are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code § 226)

(Against All Defendants)

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

82. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of its 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 basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

83. Defendants have intentionally and willfully failed to provide Plaintiff and the Class with complete and accurate wage statements. The deficiencies include, but are not limited to the failure list the total number of hours worked, premium pay, the actual gross wages earned, and the correct rates of pay.

84. Because of Defendants' violation of California Labor Code section 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

85. More specifically, Plaintiff and the Class have been injured by Defendants' intentional

1 and willful violation of California Labor Code section 226(a) because they were denied both their legal
2 right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant
3 to California Labor Code section 226(a).

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

7 87. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance with this
8 section, pursuant to California Labor Code section 226(g).

9 **SIXTH CAUSE OF ACTION**

10 **(Violation of Cal. Business & Professions Code §§ 17200, *et seq.*)**

11 **(Against All Defendants)**

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

14 89. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful,
15 and harmful to Plaintiff and the Class, to the general public, and Defendants' competitors. Accordingly,
16 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of
17 Civil Procedure section 1021.5.

18 90. Defendants' activities as alleged herein are violations of California law, and constitute
19 unlawful business acts and practices in violation of California Business & Professions Code section
20 17200, *et seq.*

21 91. Plaintiff is a "person" within the meaning of Business & Professions Code section 17204,
22 has suffered injury, and therefore has standing to bring this cause of action for injunctive relief,
23 restitution, and other appropriate equitable relief.

24 92. A violation of California Business & Professions Code section 17200, *et seq.* may be
25 predicated on the violation of any state or federal law. In this instant case, Defendants' policies and
26 practices of requiring employees, including Plaintiff and the Class, to work overtime without proper
27 compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants'
28 systematic policies and practices of requiring employees, including Plaintiff and the Class, to work

1 without legally compliant meal periods and rest breaks violate California Labor Code sections 226.7
2 and 512(a). Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and
3 the Class violate California Labor Code sections 201, 202, and 203.

4 93. Defendants also violated California Labor Code sections 204, 226(a), 1194, 510, and
5 1174(d).

6 94. Wage-and-hour laws express fundamental public policies. Paying employees their wages
7 and overtime, providing them with meal periods and rest breaks, etc., are fundamental public policies of
8 California. Labor Code section 90.5(a) sets forth the public policies of this State vigorously to enforce
9 minimum labor standards, to ensure that employees are not required or permitted to work under unlawful
10 conditions, and to protect law-abiding employers and their employees from competitors who lower costs
11 to themselves by failing to comply with fair labor standards. Through the conduct alleged in this
12 Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of
13 the Labor Code, and have engaged in other unlawful and unfair business practices in violation of
14 Business & Professions Code § 17200 *et seq.*

15 95. As a result of the herein described violations of California law, Defendants unlawfully
16 gained an unfair advantage over other businesses.

17 96. Plaintiff and the Class have been personally injured by Defendants' unlawful business
18 acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or
19 property.

20 97. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and
21 the Class are entitled to restitution of the wages withheld and retained by Defendants during a period
22 that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to
23 California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

24 **SEVENTH CAUSE OF ACTION**

25 **(Violation of California Labor Code § 2698, *et seq.*)**

26 **(Against All Defendants)**

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

1 99. Plaintiff brings this Seventh Cause of Action as a representative action on behalf of
2 himself and all other Aggrieved Employees in the capacity as a private attorney general pursuant to the
3 Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”).

4 100. PAGA specifically provides for a private right of action to recover civil penalties for
5 violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision of
6 this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
7 Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees,
8 for a violation of this code, may, as an alternative, be recovered through a civil action brought by an
9 aggrieved employee on behalf of himself or herself and other current or former employees pursuant to
10 the procedures specified in Section 2699.3.” Labor Code § 2699(a).

11 101. Plaintiff was employed by Defendants and the Labor Code violations alleged above were
12 committed against him during his time of employment. Plaintiff is therefore, an “aggrieved employee”
13 under PAGA.

14 102. As set forth in detail above, during all times relevant to this Action, Defendants have
15 routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes by:

- 16 a. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime compensation
17 in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 18 b. Failing to provide legally compliant meal periods to Plaintiff and the Aggrieved
19 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional hour
20 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512.
- 21 c. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take
22 duty-free rest periods, and failing to pay Plaintiff and the Aggrieved Employees an
23 additional hour of premium pay for rest period violations in violation of Labor Code §
24 226.7.
- 25 d. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end of their
26 employment in violation of Labor Code § 203.
- 27 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during
28 employment in violation of Labor Code § 204.

1 f. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
2 itemized wage statements in violation of Labor Code § 226.

3 g. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees’
4 work periods, meal periods, total daily hours, hours per pay period, total wages and
5 compensation, and applicable pay rates in violation of Labor Code § 1174(d) and the
6 applicable IWC Wage Order(s).

7 103. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and
8 on behalf of himself and the Aggrieved Employees and the State of California, requests and is entitled
9 to recover penalties against Defendants for the Labor Code violations described above, including but
10 not limited to penalties under the applicable IWC Wage Order(s), including IWC Wage Order 8-2001
11 and/or IWC Wage Order 13-2001, penalties under California Labor Code sections 2699, 558, 210, 226,
12 226.3 and 1174.5, and any and all additional penalties and sums as provided by the California Labor
13 Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to be
14 shown according to proof at trial.

15 104. Pursuant to Labor Code § 2699.3, on or about February 24, 2024, Plaintiff, through his
16 counsel of record, gave written notice by online filing with the Labor and Workforce Development
17 Agency (“LWDA”) and by certified mail to the Defendants, of the specific provisions of the Labor Code
18 and IWC Wage Order(s) that Defendants have violated, including the facts and theories to support the
19 violations, and of Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid
20 the filing fee required under Labor Code § 2699.3. To date, the LWDA has not indicated that it intends
21 to investigate the violations discussed in the PAGA notice. Accordingly, Plaintiff has or soon will have
22 fulfilled all administrative prerequisites to the pursuit of this PAGA claim on behalf himself and other
23 Aggrieved Employees pursuant to Labor Code § 2699.3.

24 105. Plaintiff was compelled to retain the services of counsel to file this court action to protect
25 his interests and the Aggrieved Employees, and to assess and collect the civil penalties owed by
26 Defendants. Plaintiff therefore seeks an award of reasonable attorneys’ fees and costs pursuant to Labor
27 Code § 2699(g)(1), and any other applicable statute.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public
3 similarly situated, and as a private attorney general, prays for relief and judgment against Defendants,
4 jointly and severally, as follows:

5 **Class Certification**

- 6 1. That this action be certified as a class action;
7 2. That Plaintiff be appointed as the representative of the Class;
8 3. That counsel for Plaintiff be appointed as Class Counsel; and
9 4. That Defendants provide to Class Counsel immediately the names and most current/last
10 known contact information (address, e-mail, and telephone numbers) of all class members.

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

- 12 5. That the Court declare, adjudge, and decree that Defendants violated California Labor
13 Code sections 510 and 1198 and applicable IWC Wage Order(s) by willfully failing to pay all overtime
14 wages due to Plaintiff and other Class Members;
15 6. For general unpaid wages at overtime wage rates and such general and special damages
16 as may be appropriate;
17 7. For pre-judgment interest on any unpaid overtime compensation commencing from the
18 date such amounts were due;
19 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
20 Labor Code section 1194; and
21 9. For such other and further relief as the Court may deem just and proper.

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

- 23 10. That the Court declare, adjudge, and decree that Defendants violated California Labor
24 Code sections 226.7 and 512 and applicable IWC Wage Order(s) by willfully failing to provide all meal
25 periods (including second meal periods) to Plaintiff and the Class;
26 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each
27 employee's regular rate of compensation for each workday that a meal period was not provided;
28 12. For all actual, consequential, and incidental losses and damages, according to proof;

- 1 13. For premium wages pursuant to California Labor Code section 226.7;
- 2 14. For pre-judgment interest on any unpaid wages from the date such amounts were due;
- 3 15. For reasonable attorneys' fees and costs of suit incurred herein; and
- 4 16. For such other and further relief as the Court may deem just and proper.

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

6 17. That the Court declare, adjudge, and decree that Defendants violated California Labor

7 Code section 226.7 and applicable IWC Wage Order(s) by willfully failing to provide all rest periods to

8 Plaintiff and the Class;

9 18. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each

10 employee's regular rate of compensation for each workday that a rest period was not provided;

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

12 20. For premium wages pursuant to California Labor Code section 226.7;

13 21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

14 and

15 22. For such other and further relief as the Court may deem just and proper.

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

17 23. That the Court declare, adjudge, and decree that Defendants violated California Labor

18 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of

19 termination of the employment of Plaintiff and other Class Members no longer employed by Defendants;

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

21 25. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff

22 and other Class Members who have left Defendants' employ;

23 26. For pre-judgment interest on any unpaid compensation from the date such amounts were

24 due; and

25 27. For such other and further relief as the Court may deem just and proper.

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

27 28. That the Court declare, adjudge, and decree that Defendants violated the record keeping

28 provisions of California Labor Code section 226(a) and applicable IWC Wage Order(s) as to Plaintiff

1 and the Class, and willfully failed to provide accurate itemized wage statements thereto;

2 29. For actual, consequential, and incidental losses and damages, according to proof;

3 30. For statutory penalties pursuant to California Labor Code section 226(e); and

4 31. For such other and further relief as the Court may deem just and proper.

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

6 32. That the Court declare, adjudge and decree that Defendants violated California Business
7 and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the Class all overtime
8 compensation due to them, failing to provide all meal and rest periods to Plaintiff and the Class, failing
9 to pay Plaintiff's and other Class Members' wages timely as required by California Labor Code section
10 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d);

11 33. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment interest
12 from the day such amounts were due and payable;

13 34. For the appointment of a receiver to receive, manage and distribute any and all funds
14 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
15 of violation of California Business and Professions Code sections 17200, *et seq.*;

16 35. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
17 Code of Civil Procedure section 1021.5;

18 36. For injunctive relief to ensure compliance with this section, pursuant to California
19 Business and Professions Code sections 17200, *et seq.*; and

20 37. For such other and further relief as the Court may deem just and proper.

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

22 38. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;

23 39. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210,
24 558, 226, 226.3, 1174.5, and all other penalties allowed by the California Labor Code and/or other
25 applicable statutes; and

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28 ///

1 40. For such other relief as the Court deems just and proper.

2
3 DATED: April 16, 2024

4 Respectfully submitted,

5 **NORTH LAW, P.C.**

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8 _____
9 Hengameh S. Safaei
10 Attorneys for Plaintiff JUAN PABLO
11 BERMUDEZ LEON, individually and on
12 behalf of others similarly situated
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DATED: April 16, 2024

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Rafael

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