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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ABELARDO HERNANDEZ, individually,
and on behalf of other members of the
general public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

CAPTEK SOFTGEL INTERNATIONAL,
INC., a California corporation; J & D
LABORATORIES, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2024-00003443-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5 (Failure to Produce Employment Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

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- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Abelardo Hernandez, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

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

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

10 **THE PARTIES**

11 4. Plaintiff Abelardo Hernandez is a resident of Bellflower, in Los Angeles
12 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee
13 from approximately April 2005 to July 2023. Plaintiff worked for Defendants as a Quality
14 Assurance Technician at their facility in Cerritos, California. During his employment,
15 Plaintiff typically worked eight (8) hours or more per day and five (5) days or more per week.
16 Plaintiff's primary job duties included, without limitation, performing and documenting
17 inspections, checks, tests, and sampling procedures during the manufacturing processes of
18 bottling softgel capsules; performing line clearance for removal of all previous products,
19 components, and foreign materials; and reporting manufacturing operations non-conformances
20 to supervisors.

21 5. CAPTEK SOFTGEL INTERNATIONAL, INC. was and is, upon information
22 and belief, a California corporation, and at all times hereinafter mentioned, an employer
23 whose employees are engaged throughout this county and the State of California.

24 6. J & D LABORATORIES, INC. was and is, upon information and belief, a
25 California corporation, and at all times hereinafter mentioned, an employer whose employees
26 are engaged throughout this county and the State of California.

27 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
28 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to

1 amend the complaint and serve such fictitiously named Defendants once their names and
2 capacities become known.

3 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
4 were the partners, agents, owners, or managers of CAPTEK SOFTGEL INTERNATIONAL,
5 INC. and J & D LABORATORIES, INC. at all relevant times.

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

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

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

21 12. Under California law, Defendants are jointly and severally liable as employers
22 for the violations alleged herein because they have each exercised sufficient control over the
23 wages, hours, working conditions, and employment status of Plaintiff and class members.
24 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
25 controlled their work schedule and/or conditions of employment, determined their rate of pay,
26 and maintained their employment records. Defendants suffered or permitted Plaintiff and
27 class members to work and/or “engaged” Plaintiff and class members so as to create a
28 common-law employment relationship. As joint employers of Plaintiff and class members,

1 Defendants are jointly and severally liable for the civil penalties and all other relief available
2 to Plaintiff and class members under the law.

3 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
4 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
5 members because Defendants have:

- 6 (a) jointly exercised meaningful control over the work performed by
7 Plaintiff and class members;
- 8 (b) jointly exercised meaningful control over Plaintiff's and class members'
9 wages, hours, and working conditions, including the quantity, quality
10 standards, speed, scheduling, and operative details of the tasks
11 performed by Plaintiff and class members;
- 12 (c) jointly required that Plaintiff and class members perform work which is
13 an integral part of Defendants' businesses; and
- 14 (d) jointly exercised control over Plaintiff and class members as a matter of
15 economic reality in that Plaintiff and class members were dependent on
16 Defendants, who shared the power to set the wages of Plaintiff and class
17 members and determined their working conditions, and who jointly
18 reaped the benefits from the underpayment of their wages and
19 noncompliance with other statutory provisions governing their
20 employment.

21 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
22 there has existed a unity of interest and ownership between Defendants such that any
23 individuality and separateness between the entities has ceased.

24 15. CAPTEK SOFTGEL INTERNATIONAL, INC.; J & D LABORATORIES,
25 INC.; and DOES 1 through 10 are therefore alter egos of each other.

26 16. Adherence to the fiction of the separate existence of Defendants would permit
27 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
28 from liability for the wrongful acts committed by them under the name CAPTEK.

1 17. Plaintiff further alleges, upon information and belief, that Defendants CAPTEK
2 SOFTGEL INTERNATIONAL, INC. and J & D LABORATORIES, INC. are alter egos of
3 each other for the following reasons:

4 (a) According to their most recent “Statement of Information” forms filed
5 with the California Secretary of State, CAPTEK SOFTGEL
6 INTERNATIONAL, INC. and J & D LABORATORIES, INC. share the
7 officers and/or directors, including, but not limited to:

8 (i) Carl Randall Bridges as Chief Operating Officer and Jan Fuh
9 Miller as Secretary and Chief Financial Officer; and

10 (ii) Corby Reese and Alex Litt as Directors;

11 (b) According to the California Secretary of State’s website
12 (<https://bizfileonline.sos.ca.gov/>), CAPTEK SOFTGEL
13 INTERNATIONAL, INC. and J & D LABORATORIES, INC. share the
14 same agent for service of process, C T CORPORATION SYSTEM; and

15 (c) On information and belief, CAPTEK SOFTGEL INTERNATIONAL,
16 INC. and J & D LABORATORIES, INC. utilize the same standardized
17 employment forms and issue the same employment policies.

18 **GENERAL ALLEGATIONS**

19 18. Defendants are a leading softgel contract manufacturer in the vitamins,
20 minerals, and supplements industry, with at least three (3) facilities in California. Upon
21 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
22 department at their company headquarters in Cerritos or Vista, California, which is
23 responsible for the recruiting and hiring of new employees, and communicating and
24 implementing Defendants’ company-wide policies, including timekeeping policies and meal
25 and rest period policies, to employees throughout California.

26 19. In particular, Plaintiff and class members, on information and belief, received
27 the same standardized documents and/or written policies. Upon information and belief, the
28 usage of standardized documents and/or written policies, including new-hire documents,

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

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

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

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

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

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

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

1 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
2 forms of compensation, but failed to include all forms of remuneration in calculating the
3 regular rate of pay for Plaintiff and/or class members.

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

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

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

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

1 statements.

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

6 31. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
7 should have known that they were required to comply with requests from Plaintiff and class
8 members to inspect or receive copies of their personnel and other employment records,
9 including copies of instruments that they had signed, within the statutory time limits in
10 accordance with the California Labor Code and applicable IWC Wage Order, but failed to do
11 so.

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

18 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to timely payment of wages
20 during their employment. In violation of the California Labor Code, Plaintiff and class
21 members did not receive payment of all wages, including, but not limited to, overtime wages,
22 minimum wages, and/or meal and rest period premiums, within permissible time periods.

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

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

6 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants knew or should have known that Defendants had a duty to provide
8 Plaintiff and class members with written notice of the material terms of their employment with
9 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

16 **PAGA REPRESENTATIVE ALLEGATIONS**

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

24 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
25 person who was employed by the alleged violator and against whom one or more of the
26 alleged violations was committed."

27 40. Plaintiff and other current and former employees of Defendants are "aggrieved
28 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current

1 or former employees and one or more of the alleged violations were committed against them.

2 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
3 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
4 following requirements have been met:

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

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

- 25 (a) The aggrieved employee or representative shall give written notice by
26 online filing with the LWDA and by certified mail to the employer of
27 the specific provisions of the California Labor Code alleged to have
28 been violated (other than those listed in Section 2699.5), including the

1 facts and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(c) and any employer response to that notice shall be
4 accompanied by a filing fee of seventy-five dollars (\$75).

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

14 43. On February 16, 2024, Plaintiff provided written notice by online filing to the
15 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
16 Code alleged to have been violated, including facts and theories to support the alleged
17 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
18 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
19 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
20 Plaintiff PAGA Case Number LWDA-CM-1011594-24. A true and correct copy of Plaintiff's
21 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

22 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
23 sent the notice described above to the LWDA, and the LWDA has not responded that it
24 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

25 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510,
28 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

46. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

47. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

48. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

50. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

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

52. Plaintiff's proposed class consists of and is defined as follows:

1 All persons who worked for Defendants as non-exempt, hourly
2 paid employees in California, at any time from January 1, 2022,
until the date of trial ("Class").

3 53. Plaintiff's proposed subclass consists of and is defined as follows:

4 All persons who worked for Defendants as non-exempt, hourly
5 paid employees in California and who received at least one wage
6 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

7 54. Members of the Class and Subclass are referred to herein as "class members."

8 55. Plaintiff reserves the right to redefine the Class and Subclass and to add
9 additional subclasses as appropriate based on further investigation, discovery, and specific
10 theories of liability.

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

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

Code section 226(a);

(g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(h) Whether Defendants failed to produce copies or allow inspection of employees' own personnel and other employment records, including copies of instruments signed, upon written request within the statutory time limits;

(i) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiff and class members upon their discharge;

(j) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums, due to Plaintiff and class members during their employment;

(k) Whether Defendants failed to properly calculate the regular rate of pay upon which Plaintiff's and/or class members' sick leave rate of pay was based, as required by California Labor Code section 246;

(l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

(m) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;

(n) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(o) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- 1 (a) Numerosity: The class members are so numerous that joinder of all
2 members would be unfeasible and impractical. The membership of the
3 entire class is unknown to Plaintiff at this time; however, the class is
4 estimated to be greater than one hundred (100) individuals and the
5 identity of such membership is readily ascertainable by inspection of
6 Defendants' employment records.
- 7 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
8 protect the interests of each class member with whom he has a well-
9 defined community of interest, and Plaintiff's claims (or defenses, if
10 any) are typical of all class members as demonstrated herein.
- 11 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
12 protect the interests of each class member with whom he has a well-
13 defined community of interest and typicality of claims, as demonstrated
14 herein. Plaintiff acknowledges that he has an obligation to make known
15 to the Court any relationship, conflicts or differences with any class
16 member. Plaintiff's attorneys, the proposed class counsel, are versed in
17 the rules governing class action discovery, certification, and settlement.
18 Plaintiff has incurred, and throughout the duration of this action, will
19 continue to incur costs and attorneys' fees that have been, are, and will
20 be necessarily expended for the prosecution of this action for the
21 substantial benefit of each class member.
- 22 (d) Superiority: The nature of this action makes the use of class action
23 adjudication superior to other methods. A class action will achieve
24 economies of time, effort, and expense as compared with separate
25 lawsuits, and will avoid inconsistent outcomes because the same issues
26 can be adjudicated in the same manner and at the same time for the
27 entire class.
- 28 (e) Public Policy Considerations: Employers in the State of California

1 violate employment and labor laws every day. Current employees are
2 often afraid to assert their rights out of fear of direct or indirect
3 retaliation. Former employees are fearful of bringing actions because
4 they believe their former employers might damage their future
5 endeavors through negative references and/or other means. Class
6 actions provide the class members who are not named in the complaint
7 with a type of anonymity that allows for the vindication of their rights
8 while simultaneously protecting their privacy.

9 **FIRST CAUSE OF ACTION**

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

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

14 59. Labor Code section 1198 makes it illegal to employ an employee under
15 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
16 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
17 shall be the . . . standard conditions of labor for employees. The employment of any employee
18 . . . under conditions of labor prohibited by the order is unlawful.”

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

23 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
24 were required to pay Plaintiff and class members working more than eight (8) hours in a day
25 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
26 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
27 workweek.

28 62. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
2 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
3 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
4 employee, including nondiscretionary bonuses and incentive pay.

5 63. California Labor Code section 510 codifies the right to overtime compensation
6 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
7 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
8 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
9 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
10 in a day on the seventh (7th) day of work.

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

16 65. First, during the relevant time period, Defendants had, and continue to have, a
17 company-wide policy and/or practice of discouraging and impeding Plaintiff and class
18 members from recording hours worked that were outside of their scheduled shifts in order to
19 limit the amount of overtime employees could accrue. On information and belief, this policy
20 of limiting overtime, coupled with Defendants' practices of understaffing and assigning heavy
21 workloads (*see infra*), led Plaintiff and class members to work off-the-clock outside of their
22 scheduled shift times in order to complete their assigned tasks. For example, approximately
23 twice per week for about 10 minutes, Plaintiff was required to complete tasks, such as
24 reviewing emails from supervisors and consulting with the prior shift's Quality Assurance
25 Technicians to inform himself on the status of pending orders, but was not permitted to clock
26 in and record this time spent working. As another example, approximately twice per week,
27 Plaintiff clocked out at the end of his shift, but was required to continue working to finalize
28 the verification of a pending order, which could take up to 15 minutes. Thus, Defendants

1 failed to track all of the time that employees spent performing work-related tasks outside of
2 their shifts, and Plaintiff and class members received no compensation for this time.

3 66. Moreover, Defendants had, and continue to have, a company-wide policy
4 and/or practice of requiring Plaintiff and class members to complete mandatory annual
5 trainings, but did not permit them to complete them during their shifts. For example, Plaintiff
6 was required to complete the trainings while he was at home, which consisted of watching
7 videos on Defendants' company policies, which took about two (2) hours to complete each
8 time. Thus, Defendants failed to track the time Plaintiff and class members spent completing
9 the mandatory trainings, and Plaintiff and class members received no compensation for this
10 time.

11 67. Second, Defendants had, and continue to have, company-wide policies and/or
12 practices of understaffing their locations while assigning heavy workloads, including
13 pressuring employees to meet production deadlines and goals. Defendants' policies and/or
14 practices resulted in a failure to provide Plaintiff and class members with adequate meal
15 period coverage, and thus, Plaintiff and class members were not always afforded uninterrupted
16 30-minute meal periods during shifts when they were entitled to receive a meal period.
17 Defendants also had a practice of failing to schedule meal periods which, in conjunction with
18 the assignment of heavy workloads, further caused Plaintiff and class members to not be
19 relieved of their duties for compliant meal periods. For example, approximately three (3)
20 times per week, Plaintiff worked through his meal periods due to lack of coverage and heavy
21 workload. Defendants did not compensate Plaintiff and class members for the time they spent
22 working off the clock during unpaid meal periods.

23 68. Third, on information and belief, because Defendants frowned upon employees
24 accruing meal period penalties, Defendants' management pressured employees to clock out
25 for meal periods to reflect compliant meal periods, on threat of discipline, regardless of
26 whether they had received a compliant meal period or not, in order to strictly limit meal
27 penalties that would need to be paid by Defendants. Additionally, Defendants' company-wide
28 timekeeping system prevented Plaintiff and class members from recording all hours worked

1 when their meal periods were shortened or interrupted, because the system locked out Plaintiff
2 and class members once they clocked out for a meal period, and would not permit them to
3 clock back in from a meal period until 30 minutes elapsed. Thus, Defendants did not record
4 all hours worked during meal periods, and Plaintiff and class members performed work during
5 meal periods for which they were not paid.

6 69. Defendants knew or should have known that as a result of these company-wide
7 practices and/or policies, Plaintiff and class members were performing their assigned duties
8 off-the-clock before and after their shifts and during meal periods, and were suffered or
9 permitted to perform work for which they were not paid. Because Plaintiff and class members
10 worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of
11 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
12 members were not paid overtime wages for all of the overtime hours they actually worked.

13 70. Furthermore, Defendants did not pay Plaintiff and/or class members the correct
14 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
15 wage, Defendants paid Plaintiff and/or class members incentive pay, nondiscretionary
16 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
17 Code, Defendants failed to incorporate all compensation, including incentive pay,
18 nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
19 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
20 times when Plaintiff and/or class members worked overtime and received these other forms of
21 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
22 required.

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

28 //

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

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

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

74. As set forth above, as a result of Defendants’ policy of limiting the amount of overtime employees could accrue, Defendants required Plaintiff and class members to perform work off-the-clock before and after their scheduled start and end times to complete work-related tasks, such as reviewing emails from supervisors, discussing the status of pending orders, finalizing the verification of pending orders, and completing mandatory online trainings. Defendants failed to track this time that Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

75. Further, as also stated, due to Defendants’ policies and/or practices of understaffing their facilities while assigning heavy workloads, including pressure to meet production deadlines and goals, and failing to schedule meal periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

76. Also, as stated above, on information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants’ managers pressured employees

1 to clock out for meal periods to reflect compliant meal periods, on threat of discipline, even
2 when they did not receive a compliant meal period. Additionally, as stated, Defendants'
3 company-wide timekeeping system prevented Plaintiff and class members from entering time
4 worked during meal periods because the system locked out Plaintiff and class members for a
5 full 30 minutes. Thus, Defendants systematically failed to pay Plaintiff and class members for
6 actual hours worked during unpaid meal periods because these hours were not always
7 correctly recorded.

8 77. Defendants did not pay minimum wages for all hours worked by Plaintiff and
9 class members. To the extent that these off-the-clock hours did not qualify for overtime
10 premium payment, Defendants did not pay at least minimum wages for those hours worked
11 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
12 1198.

13 78. Defendants' failure to pay Plaintiff and class members minimum wages violates
14 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
15 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
16 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
17 interest thereon.

18 **THIRD CAUSE OF ACTION**

19 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period**

20 **Violations**

21 **(Against all Defendants)**

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

24 80. At all relevant times herein set forth, California Labor Code section 512(a)
25 provides that an employer may not require, cause, or permit an employee to work for a period
26 of more than five (5) hours per day without providing the employee with a meal period of not
27 less than thirty (30) minutes, except that if the total work period per day of the employee is
28 not more than six (6) hours, the meal period may be waived by mutual consent of both the

1 employer and the employee. Under California law, first meal periods must start after no more
2 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

3 81. At all relevant times herein set forth, California Labor Code sections 226.7,
4 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
5 meal period mandated by an applicable order of the IWC.

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

13 83. First, as stated, Defendants had, and continue to have, company-wide policies
14 and/or practices of understaffing while assigning heavy workloads, including pressuring
15 employees to meet production deadlines and goals, which has resulted in a lack of meal period
16 coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal
17 periods to which they were entitled. Further, as stated, Defendants had a company-wide
18 practice and/or policy of failing to schedule meal periods, which further caused Plaintiff and
19 class members to not be relieved of their duties for compliant meal periods.

20 84. As a result, Plaintiff and class members had to work through all or part of their
21 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
22 before taking meal periods. For example, as stated, about three (3) times per week, Plaintiff
23 was required to work straight through his meal periods. Additionally, Plaintiff sometimes
24 took his meal periods late, after the fifth hour of work, due to the lack of coverage.

25 85. Second, as stated above, on information and belief, because Defendants
26 frowned upon employees accruing meal period penalties, Defendants' management pressured
27 Plaintiff and class members to clock out for meal periods to reflect compliant meal periods, on
28 threat of discipline, even when they did not receive a compliant meal period. For example,

1 Plaintiff was required to clock out for his first meal periods to record that he had received
2 compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted
3 meal periods.

4 86. Further, as stated, Defendants' company-wide timekeeping system prevented
5 Plaintiff and class members from recording when their meal periods were shortened or
6 interrupted, because the system locked out Plaintiff and class members once they clocked out
7 for a meal period, and would not permit them to clock back in from a meal period before 30
8 minutes had elapsed.

9 87. Third, Defendants did not provide Plaintiff and class members with second 30-
10 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
11 his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was
12 never provided a second 30-minute meal period. Plaintiff and class members did not sign
13 valid meal period waivers on days that they were entitled to meal periods and were not
14 relieved of all duties.

15 88. At all times herein mentioned, Defendants knew or should have known that, as
16 a result of these policies, Plaintiff and class members were prevented from being relieved of
17 all duties and required to perform some of their assigned duties during meal periods.
18 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
19 members meal period premiums when meal periods were missed, shortened, interrupted,
20 and/or late.

21 89. Moreover, Defendants engaged in a company-wide practice and/or policy of
22 not paying meal period premiums owed when compliant meal periods are not provided.
23 Because of this practice and/or policy, Plaintiff and class members have not received premium
24 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants
25 did pay Plaintiff and/or class members premium pay for missed, late, and interrupted meal
26 periods, Defendants did not pay Plaintiff and/or class members at the correct rate of pay for
27 premiums because Defendants systematically failed to include all forms of compensation,
28 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the

1 regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members
2 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
3 and failed to pay the full meal period premiums due.

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

8 **FOURTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 10 **(Against all Defendants)**

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

13 92. At all relevant times herein set forth, the applicable IWC Wage Order and
14 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
15 members' employment by Defendants.

16 93. At all relevant times, the applicable IWC Wage Order provides that "[e]very
17 employer shall authorize and permit all employees to take rest periods, which insofar as
18 practicable shall be in the middle of each work period" and that the "rest period time shall be
19 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
20 hours or major fraction thereof" unless the total daily work time is less than three and one-half
21 (3 ½) hours.

22 94. At all relevant times, California Labor Code section 226.7 provides that no
23 employer shall require an employee to work during any rest period mandated by an applicable
24 order of the California IWC. To comply with its obligation to authorize and permit rest
25 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
26 employer must "relinquish any control over how employees spend their break time, and
27 relieve their employees of all duties—including the obligation that an employee remain on
28 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services*,

1 *Inc.*, 2 Cal. 5th 257, 273 (2016). California Labor Code section 226.7 and the applicable IWC
2 Wage Order also provide that rest periods shall be counted as hours worked for which there
3 shall be no deduction from wages.

4 95. Pursuant to the applicable IWC Wage Order and California Labor Code section
5 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
6 additional hour of pay at their regular rates of pay for each work day that a required rest
7 period was not authorized and permitted.

8 96. During the relevant time period, Defendants regularly failed to authorize and
9 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
10 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
11 practices, including understaffing and assigning heavy workloads, prevented Plaintiff and
12 class members from being relieved of all duty to take rest periods. Additionally, Defendants
13 failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate
14 rest period coverage, further led to Plaintiff and class members not being authorized and
15 permitted to take rest periods.

16 97. Furthermore, on information and belief, Defendants maintained and
17 implemented a company-wide on-premises rest period policy, which effectively required that
18 Plaintiff and class members remain on the premises during their rest periods. Specifically,
19 Defendants' managers erroneously informed employees that should they leave Defendants'
20 premises during rest periods, they are to clock out for their rest period. Because of
21 Defendants' imposition on employees to clock out for their rest periods when they left the
22 premises, Plaintiff and class members were discouraged from taking all rest periods to which
23 they were entitled, and denied the ability to use their rest periods freely for their own
24 purposes, such as completing personal errands. Thus, Defendants effectively maintained
25 control over Plaintiff and class members during rest periods. Moreover, to the extent that
26 Plaintiff and class members clocked out for rest periods pursuant to Defendants' on-premises
27 rest period policy, Defendants unlawfully deducted rest periods from Plaintiff's and class
28 members' wages.

98. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, approximately five (5) times per week, Plaintiff missed his rest periods, due to the lack of coverage and Defendants' failure to schedule rest periods for employees.

99. Defendants have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods. Alternatively, to the extent that Defendants did pay Plaintiff and/or class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and/or class members at the correct rate of pay for premiums because Defendants failed to include all forms of compensation, such as shift incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

100. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

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

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

102. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total
2 hours worked, and all applicable rates of pay.

3 103. At all relevant times, Defendants have knowingly and intentionally provided
4 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
5 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
6 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
7 applicable hourly rates in effect during the pay period, including rates of pay for overtime
8 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
9 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

10 104. Because Defendants did not record the time Plaintiff and Subclass members
11 spent working off the clock and deducted time from their records for meal periods that were
12 interrupted and/or missed (and therefore time for which they should have been paid),
13 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
14 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same
15 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
16 Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly
17 rates of pay in effect during the pay period and the corresponding accurate number of hours
18 worked at each hourly rate, in violation of section 226(a)(9).

19 105. Additionally, because Defendants did not calculate Plaintiff's and/or Subclass
20 members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
21 rest period premiums, Defendants did not list the correct amount of gross wages in compliance
22 with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net
23 wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable
24 hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages
25 and/or meal and rest period premiums, in violation of section 226(a)(9).

26 106. The wage statement deficiencies also include, among other things, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
28 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period

1 for which employees were paid; failing to list the name of the employee and only the last four
2 digits of his or her social security number or an employee identification number other than a
3 social security number; failing to list the name and address of the legal entity that is the
4 employer; and/or failing to state all hours worked as a result of not recording or stating hours
5 worked off-the-clock.

6 107. California Labor Code section 1174(d) provides that “[e]very person employing
7 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
8 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
9 plants or establishments at which employees are employed, payroll records showing the hours
10 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
11 applicable piece rate paid to, employees employed at the respective plants or
12 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
13 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
14 members showing the daily hours they worked and the wages paid thereto as a result of failing
15 to record the off-the-clock hours that they worked.

16 108. California Labor Code section 1198 provides that the maximum hours of work
17 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
18 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
19 employment of any employees for longer hours than those fixed by the order or under
20 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
21 Wage Order, employers are required to keep accurate time records showing when the
22 employee begins and ends each work period and meal period. During the relevant time
23 period, Defendants engaged in company-wide practices and/or policies of failing to record
24 actual hours worked, and thereby failed to keep accurate records of work period and meal
25 period start and end times for Plaintiff and Subclass members, in violation of section 1198.
26 Also, in light of Defendants’ failure to provide Plaintiff and Subclass members with second
27 30-minute meal periods to which they were entitled, Defendants kept no records of meal start
28 and end times for second meal periods.

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

SIXTH CAUSE OF ACTION

**Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5—Failure to
Produce and/or Permit Inspection of Records and Instruments Signed
(Against all Defendants)**

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

111. At all relevant times herein, California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request.

112. At all times relevant herein, California Labor Code section 432 states, “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” California Labor Code section 433 states, “[a]ny person violating this article is guilty of a misdemeanor.”

113. At all times relevant herein, California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request.

114. At all times relevant herein, IWC Wage Order No. 1-2001, subdivision 7(A), provides that “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which

1 operations cease and authorized rest periods need not be recorded. (4) Total wages paid each
2 payroll period, including value of board, lodging, or other compensation actually furnished to
3 the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This
4 information shall be made readily available to the employee upon reasonable request.” IWC
5 Wage Order No. 1-2001, subdivision 7(C), also provides, “[a]ll required records shall be in
6 the English language and in ink or other indelible form, properly dated, showing month, day
7 and year, and shall be kept on file by the employer for at least three years at the place of
8 employment or at a central location within the State of California. An employee’s records
9 shall be available for inspection by the employee upon reasonable request.”

10 115. During the relevant time period, Plaintiff sent Defendants reasonable written
11 requests for documents and records relating to his employment with Defendants. During the
12 relevant time period, Defendants failed to produce for inspection and copying or otherwise
13 permit inspection and copying of documents and records relating to Plaintiff’s employment.
14 For example, on January 11, 2024, Plaintiff sent a written request to Defendants via FedEx
15 overnight mail. On January 12, 2024, FedEx confirmed Defendants received Plaintiff’s
16 written request for records. Additionally, on February 14, 2024, Plaintiff sent a second
17 written request to Defendants via FedEx overnight mail. On February 15, 2024, FedEx
18 confirmed Defendants received Plaintiff’s second written request for records. To date,
19 Defendants have failed to respond to either of Plaintiff’s written requests for records. Thus,
20 Defendants have failed to comply with the reasonable written requests for documentation and
21 records relating to Plaintiff’s employment within the statutory time limits, in violation of
22 Labor Code sections 226(b)-(c), 432, 1198, and 1198.5, and the applicable IWC Wage Order.

23 116. Plaintiff and class members are therefore entitled to recover statutory penalties
24 of \$750 per employee, injunctive relief, and attorney’s fees and costs, pursuant to California
25 Labor Code sections 226(f) and (h) and/or 1198.5 (k) and (l).

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SEVENTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

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

118. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff those class members no longer employed by Defendants upon their termination.

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

120. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

121. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

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1 **EIGHTH CAUSE OF ACTION**

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

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

7 123. This cause of action is dependent upon, and wholly derivative of, the overtime
8 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
9 Plaintiff and class members during their employment.

10 124. At all times relevant herein set forth, Labor Code section 204 provides that all
11 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
12 days, inclusive, of any calendar month, other than those wages due upon termination of an
13 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
14 the month during which the labor was performed.

15 125. At all times relevant herein, Labor Code section 204 provides that all wages
16 earned by any person in any employment between the sixteenth (16th) and the last day,
17 inclusive, of any calendar month, other than those wages due upon termination of an
18 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
19 month.

20 126. At all times relevant herein, Labor Code section 204 provides that all wages
21 earned for labor in excess of the normal work period shall be paid no later than the payday for
22 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
23 204 provides that the requirements of this section are deemed satisfied by the payment of
24 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
25 seven (7) calendar days following the close of the payroll period.

26 127. During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 class members all wages due including, but not limited to, overtime wages, minimum wages,
28 and/or meal and rest period premiums, within the time periods specified by California Labor

Code section 204.

128. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

NINTH CAUSE OF ACTION

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

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

130. During the relevant time period, Defendants, on a company-wide basis, required Plaintiff and class members to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Plaintiff was required to use his personal cellular phone to communicate with his coworkers to discuss work-related issues when they worked at Defendants' off-site facility. Plaintiff was also required to download the mobile application for Microsoft Outlook onto his personal cellular phone in order to perform his job duties and respond to electronic communications in a timely manner. Although Defendants required Plaintiff and class

1 members to use their personal mobile devices and mobile data to carry out their work-related
2 duties, Defendants failed to reimburse them for their costs incurred.

3 131. Also, during the relevant time period, Defendants required Plaintiff and class
4 members to purchase supplies and equipment necessary for the performance of their duties,
5 but failed to reimburse them for their out-of-pocket costs. For example, Plaintiff spent
6 approximately \$6 per month on office supplies such as pens, because Defendants failed to
7 provide him with the necessary supplies which were required for him to complete his assigned
8 duties. Although Defendants required Plaintiff and class members to purchase supplies and
9 equipment to carry out their work-related responsibilities, Defendants failed to reimburse
10 them for their out-of-pocket costs.

11 132. Defendants could have provided Plaintiff and class members with the actual
12 equipment for use on the job, such as company mobile devices and supplies, or Defendants
13 could have reimbursed employees for the cost of their mobile device usage and supply
14 expenses. Instead, Defendants passed these operating costs off onto Plaintiff and class
15 members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
16 wage.

17 133. Defendants' company-wide policy and/or practice of not reimbursing
18 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
19 and class members violates California Labor Code section 2802. Defendants have
20 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
21 business-related expenses and costs.

22 134. Plaintiff and class members are entitled to recover from Defendants their
23 business-related expenses incurred during the course and scope of their employment, plus
24 interest.

25 **TENTH CAUSE OF ACTION**

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

27 **(Against all Defendants)**

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

1 and every allegation set forth above.

2 136. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
3 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
4 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
5 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
6 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
7 those Labor Code sections not found in section 2699.5, including sections 226(b)-(c), 246,
8 432, 516, 1182.12, 1198.5, and 2810.5.

9 137. Defendants’ conduct, as alleged herein, violates numerous sections of the
10 California Labor Code, including, but not limited to, the following:

- 11 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
12 Wage Order for Defendants’ failure to compensate Plaintiff and other
13 aggrieved employees with all required overtime pay, as alleged herein
14 and as set forth below;
- 15 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
16 applicable IWC Wage Order for Defendants’ failure to include all forms
17 of remuneration in the “regular rate” of pay as required by law for
18 purposes of paying overtime wages and/or meal and rest period
19 premiums to Plaintiff and/or other aggrieved employees, as alleged
20 herein;
- 21 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
22 1198, and the applicable IWC Wage Order for Defendants’ failure to
23 compensate Plaintiff and other aggrieved employees with at least
24 minimum wages for all hours worked, as alleged herein and set forth
25 below;
- 26 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
27 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
28 and other aggrieved employees with meal periods, as alleged herein and

as set forth below;

- (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (h) Violations of Labor Code sections 226(b)-(c), 432, 1198.5, and the applicable IWC Wage Order for failure to produce copies or allow inspection of Plaintiff's and other aggrieved employees' own personnel and other employment records, including copies of instruments signed, upon written request within the statutory time limits, as alleged herein;
- (i) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (j) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (k) Violation of Labor Code section 246 for failure to properly calculate the sick leave paid to Plaintiff and/or other aggrieved employees, as set forth below; and
- (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

138. During the relevant time period, as stated, due to Defendants' policies and/or practices of understaffing their facilities while assigning heavy workloads, including pressure

1 to meet production deadlines and goals, and failing to schedule meal periods, Plaintiff and
2 other aggrieved employees were impeded from taking all uninterrupted meal periods to which
3 they were entitled and were required to work off-the-clock during meal periods, have their
4 meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal
5 periods. Moreover, on information and belief, other aggrieved employees were required to
6 don and doff personal protective equipment (“PPE”), such as gloves, hats, and gowns, at
7 Defendants’ facilities. However, Defendants did not allow other aggrieved employees to
8 report the time spent donning and doffing their PPE at the beginning and end of their meal
9 periods, despite being on Defendants’ premises and under Defendants’ control. As a result,
10 other aggrieved employees were required to spend time donning and doffing their PPE off-
11 the-clock. Defendants also had a company-wide practice or policy of requiring that other
12 aggrieved employees carry and respond to a company-issued radio at all times. As a result,
13 Defendants’ management contacted other aggrieved employees on their company-issued
14 radios during unpaid meal periods to discuss work-related matters. Defendants knew or
15 should have known that other aggrieved employees were performing work while off-the-clock
16 in order to meet Defendants’ expectations, but failed to compensate them for this time.

17 139. Defendants’ conduct violates the applicable IWC Wage Order, and California
18 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and/or other aggrieved employees
19 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
20 2699(a), (f), and (g).

21 140. Moreover, Defendants knew or should have known that as a result of these
22 company-wide practices and/or policies, Plaintiff and/or other aggrieved employees were
23 working off-the-clock during their meal periods, and were suffered or permitted to perform
24 work for which they were not paid. Defendants’ failure to compensate Plaintiff and/or other
25 aggrieved employees at least minimum wages for all hours worked off-the-clock, as alleged
26 herein, in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
27 and the applicable IWC Wage Order. To the extent that these off-the-clock hours qualified for
28 overtime premium payment, Defendants failed to pay Plaintiff and/or other aggrieved

1 employees the balance of overtime compensation in violation of California Labor Code
2 sections 510 and 1198. Plaintiff and/or other aggrieved employees are therefore entitled to
3 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 141. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
5 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
6 days from the commencement of employment with paid sick days, to be accrued at least one
7 hour for every 30 hours worked. Labor Code section 246(l) provides that an employer shall
8 calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time for nonexempt
9 employees shall be calculated in the same manner as the regular rate of pay for the workweek
10 in which the employee uses paid sick time, whether or not the employee actually works
11 overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be
12 calculated by dividing the employee’s total wages, not including overtime premium pay, by
13 the employee’s total hours worked in the full pay periods of the prior 90 days of
14 employment.”

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

26 143. Defendants’ failure to properly calculate the sick leave rates of pay based on all
27 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and/or
28 other aggrieved employees on a company-wide basis, in violation of Labor Code section

246(l). Plaintiff and/or other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* – Unlawful Business Practices (Against all Defendants)

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

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

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

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

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

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and

1 rest period premiums to Plaintiff and/or class members, in violation of
2 California Labor Code sections 226.7, 510, and 1198, and the applicable
3 IWC Wage Order, as alleged herein;

4 (c) Failing to pay at least minimum wage to Plaintiff and class members in
5 violation of California Labor Code sections 1182.12, 1194, 1197,
6 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
7 herein;

8 (d) Failing to provide all meal periods to Plaintiff and class members in
9 violation of California Labor Code sections 226.7, 512(a), 516, and
10 1198, and the applicable IWC Wage Order, as alleged herein;

11 (e) Failing to authorize and permit Plaintiff and class members to take all
12 rest periods in violation of California Labor Code sections 226.7, 516,
13 and 1198, and the applicable IWC Wage Order, as alleged herein;

14 (f) Failing to provide Plaintiff and class members with accurate wage
15 statements and failing to maintain accurate payroll records in violation
16 of California Labor Code sections 226(a), 1174(d), and 1198, and the
17 applicable IWC Wage Order, as alleged herein;

18 (g) Failing to produce copies or allow inspection of Plaintiff's and class
19 members' own personnel and other employment records, including
20 copies of instruments signed, upon written request within the statutory
21 time limits, in violation of California Labor Code sections 226(b)-(c),
22 432, 1198, and 1198.5, and the applicable IWC Wage Order, as alleged
23 herein;

24 (h) Failing timely to pay all earned wages to Plaintiff and class members in
25 violation of California Labor Code section 204, as alleged herein;

26 (i) Failing to properly calculate the sick leave paid to Plaintiff and/or class
27 members in violation of Labor Code section 246(l), as set forth below;

28 (j) Failing to reimburse Plaintiff and class members for all business

1 expenses necessarily incurred in violation of California Labor Code
2 section 2802, as alleged herein; and

3 (k) Failing to provide written notice of information material to Plaintiff's
4 and class members' employment with Defendants in violation of
5 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

6 149. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
7 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
8 days from the commencement of employment with paid sick days, to be accrued at least one
9 hour for every 30 hours worked. Labor Code section 246(l) provides that an employer shall
10 calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt
11 employees shall be calculated in the same manner as the regular rate of pay for the workweek
12 in which the employee uses paid sick time, whether or not the employee actually works
13 overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be
14 calculated by dividing the employee's total wages, not including overtime premium pay, by
15 the employee's total hours worked in the full pay periods of the prior 90 days of
16 employment."

17 150. During the relevant time period, on information and belief, Defendants did not
18 pay Plaintiff and/or class members the correct sick leave rates of pay. In addition to an hourly
19 wage, Defendants paid Plaintiff and/or class members incentive pay, nondiscretionary
20 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
21 Code, Defendants failed to incorporate all remunerations, including incentive pay and/or
22 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
23 calculating the sick leave rate. Therefore, during times when Plaintiff and/or class members
24 took sick leave and received these other forms of pay, Defendants failed to pay all sick leave
25 benefits by paying a lower sick leave rate than required. Specifically, Defendants paid
26 Plaintiff and/or class members sick leave based on their hourly rate of pay instead of their
27 regular rate of pay.

28 151. Defendants' failure to properly calculate the sick leave rates of pay based on all

1 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and/or
2 class members on a company-wide basis, in violation of Labor Code section 246(l).

3 152. At all relevant times herein, California's Wage Theft Prevention Act was
4 enacted to ensure that employers provide employees with basic information material to their
5 employment relationship at the time of hiring, and to ensure that employees are given written
6 and timely notice of any changes to basic information material to their employment. Codified
7 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
8 time of hiring, an employer must provide written notice to employees containing basic and
9 material payroll information, including, among other things, the rate(s) of pay and basis
10 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
11 including any rates for overtime, the regular payday designated by the employer, and any
12 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
13 Code § 2810.5(a)(1)(A)-(C).

14 153. At all relevant times, on information and belief, Defendants failed, on a
15 company-wide basis, to provide written notice to Plaintiff and class members that lists the
16 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
17 to provide Plaintiff and class members with written notice of basic information regarding their
18 employment with Defendants is in violation of California Labor Code section 2810.5.

19 154. As a result of the violations of California law herein described, Defendants
20 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
21 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
22 herein.

23 155. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
24 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
25 Defendants during a period that commences four years prior to the filing of the initial
26 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
27 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
28 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

1 **TWELFTH CAUSE OF ACTION**

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

3 **Unfair Business Practices**

4 **(Against all Defendants)**

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

7 157. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

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

15 159. Defendants’ activities, namely Defendants’ company-wide practice and/or
16 policy of not paying Plaintiff and class members all meal and rest period premiums due to
17 them under Labor Code section 226.7, deprived Plaintiff and class members of the
18 compensation guarantee and enhanced enforcement implemented by section 226.7. The
19 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
20 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
21 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
22 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
23 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
24 unfair business practice in violation of California Business & Professions Code sections
25 17200, *et seq.* (*Id.*)

26 160. A violation of California Business & Professions Code sections 17200, *et seq.*
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
28 and practices have violated the spirit of California’s meal and rest period laws and constitute

1 acts against the public policy behind these laws.

2 161. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
4 benefits implemented by section 226.7 withheld and retained by Defendants during a period
5 that commences four years prior to the filing of the initial complaint; a permanent injunction
6 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
7 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
8 Procedure section 1021.5 and other applicable laws; and an award of costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

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

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

17 **Class Certification**

- 18 2. That this case be certified as a class action;
19 3. That Plaintiff be appointed as the representative of the Class and Subclass;
20 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

3 9. For such other and further relief as the Court may deem equitable and
4 appropriate.

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

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

9 11. For general unpaid wages and such general and special damages as may be
10 appropriate;

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

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

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

16 15. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

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

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

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

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

28 20. For pre-judgment interest on any unpaid meal period premiums from the date

such amounts were due, or as otherwise provided by law;

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

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

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

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

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

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

As to the Fifth Cause of Action

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

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

- 1 32. For injunctive relief pursuant to California Labor Code section 226(h);
2 33. For statutory penalties pursuant to California Labor Code section 226(e);
3 34. For attorneys' fees and costs pursuant to California Labor Code section
4 226(e)(1); and
5 35. For such other and further relief as the Court may deem equitable and
6 appropriate.

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

- 8 36. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 226(b)-(c), 432, 1198, and 1198.5 and the applicable IWC Wage Order
10 by failing to produce for inspection and copying or otherwise permit inspection and copying
11 of records relating to Plaintiff's and class members' employment with Defendants;
12 37. For statutory penalties pursuant to California Labor Code section 226(f) and
13 1198.5 (k);
14 38. For general and special damages as may be appropriate;
15 39. For injunctive relief pursuant to California Labor Code section 226(h) and
16 1198.5(l) including, but not limited to, an order requiring Defendants to produce for
17 inspection and copying or otherwise permit inspection and copying of records relating to
18 Plaintiff's and class members' employment with Defendants as soon as reasonably practical;
19 40. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
20 California Labor Code section 226(h) and 1198.5(l); and
21 41. For such other and further relief as the Court may deem equitable and
22 appropriate.

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

- 24 42. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
26 and/or meal and rest period premiums, owed at the time of termination of the employment of
27 Plaintiff and other terminated class members;
28 43. For all actual, consequential and incidental losses and damages, according to

1 proof;

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

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

6 46. For attorneys' fees pursuant to California Code of Civil Procedure section
7 1021.5, or as otherwise provided by law; and

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

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

11 48. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
13 overtime wages, minimum wages, and/or meal and rest period premiums, during their
14 employment;

15 49. For all actual, consequential and incidental losses and damages, according to
16 proof;

17 50. For statutory penalties according to proof pursuant to California Labor Code
18 section 210;

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

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

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

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

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

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

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

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

7 58. For attorneys' fees and costs pursuant to California Labor Code section
8 2802(c), or as otherwise provided by law; and

9 59. For such other and further relief as the Court may deem equitable and
10 appropriate.

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

12 60. That the Court declare, adjudge and decree that Defendants violated the
13 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
14 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing
15 to include all forms of remuneration in the regular rate of pay for purposes of paying overtime
16 wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by
17 failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by
18 failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
19 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements
20 and maintain accurate payroll records); 226(b)-(c), 432, 1198, and 1198.5 (by failing to
21 produce copies or allow inspection of records and instruments signed); 201 and 202 (by
22 failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all
23 earned wages during employment); 246 (by failing to properly calculate sick leave pay); 2802
24 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice
25 of material terms of employment);

26 61. For civil penalties pursuant to the California Labor Code sections 210, 226(f),
27 226.3, 248.5, 256, 558, 1174.5, 1197.1, 1198.5(k), and/or 2699(a), (f), and (g), for violations
28 of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a),

516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5;

62. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5;

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

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

As to the Eleventh Cause of Action

65. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and/or class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to produce copies or allow inspection of records and instruments signed, failing to timely pay Plaintiff and class members all earned wages during employment, failing to properly calculate Plaintiff's and/or class members' sick leave pay, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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

67. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections

17200, *et seq.*;

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

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

As to the Twelfth Cause of Action

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

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

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

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

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

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1 75. For such other and further relief as the Court may deem equitable and
2 appropriate.

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4
5 Dated: April 22, 2024

Respectfully submitted,

6 Capstone Law APC

7 By: Roxanna Tabatabaeepour

8 Roxanna Tabatabaeepour

9 Ryan Tish

Alexander Wallin

10 Attorneys for Plaintiff Abelardo Hernandez
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EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

February 16, 2024

VIA ONLINE SUBMISSION

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

Subject: *Abelardo Hernandez v. Captek Softgel International, Inc., et al.*

Dear PAGA Administrator:

This office represents Abelardo Hernandez in connection with his claims under the California Labor Code. Mr. Hernandez was an employee of CAPTEK SOFTGEL INTERNATIONAL, INC. and/or J & D LABORATORIES, INC. For the purpose of this letter, Mr. Hernandez collectively refers to these entities as “CAPTEK.”

The employers may be contacted directly at the addresses below:

CAPTEK SOFTGEL INTERNATIONAL, INC.	J & D LABORATORIES, INC.
16218 ARTHUR STREET	2710 PROGRESS STREET
CERRITOS, CA 90703	VISTA, CA 92081

Mr. Hernandez intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Hernandez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CAPTEK as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CAPTEK employed Mr. Hernandez as an hourly paid, non-exempt employee from approximately April 2005 to July 2023. Mr. Hernandez worked for CAPTEK as a Quality Assurance Technician at its facility in Cerritos, California. During his employment, Mr. Hernandez typically worked eight (8) hours or more per day and five (5) days or more per week. At the time his employment ended, Mr. Hernandez was compensated approximately \$19.85 per hour. His primary job duties included, without limitation, performing and documenting inspections, checks, tests, and sampling procedures during the manufacturing processes of bottling softgel capsules; performing line clearance for removal of all previous products, components, and foreign materials; and reporting manufacturing operations non-conformances to supervisors.

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

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

CAPTEK SOFTGEL INTERNATIONAL, INC. and J & D LABORATORIES, INC. are California corporations. Together, CAPTEK is a leading softgel contract manufacturer in the vitamins, minerals, and supplements industry, with at least three (3) facilities in California. Upon information and belief, CAPTEK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Cerritos or Vista, California, for all non-exempt, hourly paid employees working for CAPTEK in California, including Mr. Hernandez and other aggrieved employees. At all relevant times, CAPTEK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Hernandez and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CAPTEK willfully failed to pay all overtime wages owed to Mr. Hernandez and other aggrieved employees. During the relevant time period, Mr. Hernandez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Hernandez’s experience and counsel’s review of those records currently available relating to Mr. Hernandez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Hernandez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, CAPTEK had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Hernandez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with CAPTEK's practices of understaffing and assigning heavy workloads (*see infra*), led Mr. Hernandez and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, approximately twice per week for about 10 minutes, Mr. Hernandez was required to complete tasks, such as reviewing emails from supervisors and consulting with the prior shift's Quality Assurance Technicians to inform himself on the status of pending orders, but was not permitted to clock in and record this time spent working. As another example, approximately twice per week, Mr. Hernandez clocked out at the end of his shift, but was required to continue working to finalize the verification of a pending order, which could take up to 15 minutes. Thus, CAPTEK failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Hernandez and other aggrieved employees received no compensation for this time.

Moreover, CAPTEK had, and continues to have, a company-wide policy and/or practice of requiring Mr. Hernandez and other aggrieved employees to complete mandatory annual trainings, but did not permit them to complete them during their shifts. For example, Mr. Hernandez was required to complete the trainings while he was at home, which consisted of watching videos on CAPTEK's company policies, which took about two (2) hours to complete each time. Thus, CAPTEK failed to track the time Mr. Hernandez and other aggrieved employees spent completing the mandatory trainings, and Mr. Hernandez and other aggrieved employees received no compensation for this time.

Second, CAPTEK had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, including pressuring employees to meet production deadlines and goals. CAPTEK's policies and/or practices resulted in a failure to provide Mr. Hernandez and other aggrieved employees with adequate meal period coverage, and thus, Mr. Hernandez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. CAPTEK also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Hernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, approximately three (3) times per week, Mr. Hernandez worked through his meal periods due to lack of coverage and heavy workload. CAPTEK did not compensate Mr. Hernandez and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Additionally, on information and belief, other aggrieved employees were required to don and doff personal protective equipment ("PPE"), such as gloves, hats, and gowns, at CAPTEK's facilities. However, CAPTEK did not allow other aggrieved employees to report the time spent donning and doffing their PPE at the beginning and end of their meal periods, despite being on CAPTEK's premises and under CAPTEK's control. As a result, other aggrieved employees were required to spend time donning and doffing their PPE off-the-clock. CAPTEK also had a company-wide practice or policy of requiring that other aggrieved employees carry and respond to a company-issued radio at all times. As a result, CAPTEK's management contacted other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. CAPTEK knew

or should have known that other aggrieved employees were performing work while off-the-clock in order to meet CAPTEK's expectations, but failed to compensate them for this time.

Third, on information and belief, because CAPTEK frowned upon employees accruing meal period penalties, CAPTEK's management pressured employees to clock out for meal periods to reflect compliant meal periods, on threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by CAPTEK. Additionally, CAPTEK's company-wide timekeeping system prevented Mr. Hernandez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Hernandez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes elapsed. Thus, CAPTEK did not record all hours worked during meal periods, and Mr. Hernandez and other aggrieved employees performed work during meal periods for which they were not paid.

CAPTEK knew or should have known that as a result of these company-wide practices and/or policies, Mr. Hernandez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Hernandez and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Hernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, CAPTEK did not pay Mr. Hernandez and/or other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, CAPTEK paid Mr. Hernandez and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CAPTEK failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Hernandez and/or other aggrieved employees worked overtime and received these other forms of pay, CAPTEK failed to pay all overtime wages by paying a lower overtime rate than required.

CAPTEK's failure to pay Mr. Hernandez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, as a result of CAPTEK's policy of limiting the amount of overtime employees could accrue, CAPTEK required Mr. Hernandez and other aggrieved employees to perform work off-the-clock before and after their scheduled start and end times to complete work-related tasks, such as reviewing emails from supervisors, discussing the status of pending orders, finalizing the verification of pending orders, and completing mandatory online trainings. CAPTEK failed to track this time that Mr. Hernandez and other aggrieved employees spent working off-the-clock, and Mr. Hernandez and other aggrieved employees received no compensation for this time.

Further, as also stated, due to CAPTEK's policies and/or practices of understaffing its facilities while assigning heavy workloads, including pressure to meet production deadlines and goals, failing to schedule meal periods, and/or requiring employees to respond to radio communications at all times, Mr. Hernandez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. As also stated, on information and belief, CAPTEK required other aggrieved employees to don and doff PPE while off-the-clock, including when leaving the production area for a meal period and when returning to the production area from a meal period.

Also, as stated above, on information and belief, because CAPTEK frowned upon employees accruing meal period penalties, CAPTEK's managers pressured employees to clock out for meal periods to reflect compliant meal periods, on threat of discipline, even when they did not receive a compliant meal period. Additionally, as stated, CAPTEK's company-wide timekeeping system prevented Mr. Hernandez and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Hernandez and other aggrieved employees for a full 30 minutes. Thus, CAPTEK systematically failed to pay Mr. Hernandez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, CAPTEK did not pay minimum wages for all hours worked by Mr. Hernandez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CAPTEK did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CAPTEK regularly failed to pay at least minimum wages to Mr. Hernandez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period

may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, CAPTEK had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet production deadlines and goals, which has resulted in a lack of meal period coverage and prevented Mr. Hernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, CAPTEK had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Hernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, on information and belief, CAPTEK also had policies and/or practices of requiring employees to don and doff PPE prior to entering and before leaving their work areas, along with the requirement that employees carry company-issued radios at all times, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Hernandez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, about three (3) times per week, Mr. Hernandez was required to work straight through his meal periods. Additionally, Mr. Hernandez sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage.

Second, as stated above, on information and belief, because CAPTEK frowned upon employees accruing meal period penalties, CAPTEK's management pressured Mr. Hernandez and other aggrieved employees, on threat of discipline, to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, Mr. Hernandez was required to clock out for his first meal periods to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods.

Further, as stated, CAPTEK's company-wide timekeeping system prevented Mr. Hernandez and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Hernandez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Third, CAPTEK did not provide Mr. Hernandez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Hernandez worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Hernandez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, CAPTEK knew or should have known that, as a result of these policies, Mr. Hernandez and other aggrieved employees were prevented from being relieved of all

duties and required to perform some of their assigned duties during meal periods. CAPTEK further knew or should have known that CAPTEK did not pay Mr. Hernandez and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, CAPTEK engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Hernandez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that CAPTEK did pay Mr. Hernandez and/or other aggrieved employees premium pay for missed, late, and interrupted meal periods, CAPTEK did not pay Mr. Hernandez and/or other aggrieved employees at the correct rate of pay for premiums because CAPTEK systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CAPTEK failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Labor Code section 226.7 and the applicable IWC Wage Order also provide that rest periods shall be counted as hours worked for which there shall be no deduction from wages.

During the relevant time period, CAPTEK regularly failed to authorize and permit Mr. Hernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CAPTEK's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Hernandez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, CAPTEK failed to schedule rest periods, which, coupled with CAPTEK's failure to provide adequate rest period coverage, further led to Mr. Hernandez and other aggrieved employees not being authorized

and permitted to take rest periods. Also, because CAPTEK required other aggrieved employees to don and doff PPE during rest periods and carry a company-issued radio to respond to requests, other aggrieved employees were not relieved of all duty in order to take compliant rest periods.

Furthermore, on information and belief, CAPTEK maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Hernandez and other aggrieved employees remain on the premises during their rest periods. Specifically, CAPTEK's managers erroneously informed employees that should they leave CAPTEK's premises during rest periods, they are to clock out for their rest period. Because of CAPTEK's imposition on employees to clock out for their rest periods when they left the premises, Mr. Hernandez and other aggrieved employees were discouraged from taking all rest periods to which they were entitled, and denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, CAPTEK effectively maintained control over Mr. Hernandez and other aggrieved employees during rest periods. Moreover, to the extent that Mr. Hernandez and other aggrieved employees clocked out for rest periods pursuant to CAPTEK's on-premises rest period policy, CAPTEK unlawfully deducted rest periods from Mr. Hernandez's and other aggrieved employees' wages.

As a result of CAPTEK's practices and policies, Mr. Hernandez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, approximately five (5) times per week, Mr. Hernandez missed his rest periods, due to the lack of coverage and CAPTEK's failure to schedule rest periods for employees.

CAPTEK have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Hernandez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CAPTEK did pay Mr. Hernandez and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CAPTEK did not pay Mr. Hernandez and/or other aggrieved employees at the correct rate of pay for premium wages because CAPTEK failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, CAPTEK failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. CAPTEK has not provided Mr. Hernandez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a

subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CAPTEK has knowingly and intentionally provided Mr. Hernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CAPTEK issued uniform wage statements to Mr. Hernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, CAPTEK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CAPTEK did not record the time Mr. Hernandez and other aggrieved employees spent working off-the-clock, CAPTEK did not list the correct amount of gross wages and net wages earned by Mr. Hernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CAPTEK failed to accurately list the total number of hours worked by Mr. Hernandez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because CAPTEK did not calculate Mr. Hernandez's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, CAPTEK did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, CAPTEK failed to list the correct amount of net wages in violation of section 226(a)(5). CAPTEK also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" At all relevant times, and in violation of Labor Code section 1174(d), CAPTEK willfully failed to maintain accurate payroll records for Mr. Hernandez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CAPTEK engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Hernandez and other aggrieved employees, in violation of section 1198. Also, in light of CAPTEK’s failure to provide Mr. Hernandez and other aggrieved employees with second 30-minute meal periods to which they were entitled, CAPTEK kept no records of meal start and end times for second meal periods.

Because CAPTEK failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Hernandez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Hernandez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee’s request. California Labor Code section 226(f) states “[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” California Labor Code section 226(h) states “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

California Labor Code section 432 states “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” California Labor Code section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

California Labor Code section 1198.5 requires that an employer provide a copy of an employee’s personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney’s fees. Cal. Lab. Code § 1198.5(l). IWC Wage Order No. 1-2001, subdivision 6(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split

shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.” IWC Wage Order No. 1-2001, subdivision 6(C), also provides “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and 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. An employee’s records shall be available for inspection by the employee upon reasonable request.”

During the relevant time period, Mr. Hernandez sent CAPTEK reasonable written requests for documents and records relating to his employment with CAPTEK. During the relevant time period, CAPTEK failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to Mr. Hernandez’s employment. For example, on January 11, 2024, Mr. Hernandez sent a written request to CAPTEK via FedEx overnight mail. On January 12, 2024, FedEx confirmed CAPTEK received Mr. Hernandez’s written request for records. To date, CAPTEK has failed to respond to Mr. Hernandez’s written request for records. Further, on information and belief, CAPTEK has failed to respond other aggrieved employees’ written requests for records within the statutory time limits. Thus, CAPTEK has failed to comply with the reasonable written requests for documents and records relating to Mr. Hernandez’s and other aggrieved employees’ employment within the statutory time limits, in violation of Labor Code sections 226(b)-(c), 432, 1198, 1198.5, and the applicable IWC Wage Order.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CAPTEK willfully failed to pay Mr. Hernandez and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

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

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. California Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

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

CAPTEK's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Hernandez and/or other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Hernandez and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, CAPTEK, on a company-wide basis, required Mr. Hernandez and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Hernandez was required to use his personal cellular phone to communicate with his coworkers to discuss work-related issues when they worked at CAPTEK’s off-site facility. Mr. Hernandez was also required to download the mobile application for Microsoft Outlook onto his personal cellular phone in order to perform his job duties and respond to electronic communications in a timely manner. Although CAPTEK required Mr. Hernandez and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, CAPTEK failed to reimburse them for their costs incurred.

Also, during the relevant time period, CAPTEK required Mr. Hernandez and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Hernandez spent approximately \$6 per month on office supplies such as pens, because CAPTEK failed to provide him with the necessary supplies which were required for him to complete his assigned duties. Although CAPTEK required Mr. Hernandez and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, CAPTEK failed to reimburse them for their out-of-pocket costs.

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

Thus, CAPTEK had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure

that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

During the relevant time period, on information and belief, CAPTEK failed, on a company-wide basis, to provide written notice to Mr. Hernandez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CAPTEK's failure to provide Mr. Hernandez and other aggrieved employees with written notice of basic information regarding their employment with CAPTEK is in violation of California Labor Code section 2810.5.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CAPTEK, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Hernandez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Hernandez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Hernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CAPTEK for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Hernandez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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

Best Regards,

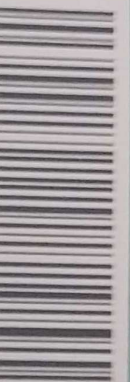
A handwritten signature in black ink, appearing to read "Anthony Castillo", with a stylized flourish at the end.

Anthony Castillo

Copy: CAPTEK SOFTGEL INTERNATIONAL, INC. (via U.S. Certified Mail);
J & D LABORATORIES, INC. (via U.S. Certified Mail)

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

7022 2410 0000 2406 0224



Captek Softgel International, Inc.
16218 Arthur Street
Cerritos, Ca 90703

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

Captek Softgel International, Inc.
16218 Arthur Street
Cerritos, Ca 90703

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

3. Received by (Printed Name)

C. Date of Delivery

- 2. Is delivery address different from item 1? ☐ Yes ☐ No
- If YES, enter delivery address below:

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery



9590 9402 7690 2122 7191 30

7022 2410 0000 2406 0224

PS Form 3811, July 2020 PSN 7530-02-000-9053

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Signature of addressee or authorized agent (Print name and sign)
Signature of addressee or authorized agent (Print name and sign)

HERNANDEZ V,
CAPTEK

Postmark

Captek Softgel International, Inc.
16218 Arthur Street
Cerritos, Ca 90703

PS Form 3811, July 2020 PSN 7530-02-000-9053

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



7022 2410 0000 2406 0217

J & D Laboratories, Inc.
2710 Progress Street
Vista, Ca 92081

SENDER: COMPLETE THIS SECTION

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J & D Laboratories, Inc.
2710 Progress Street
Vista, Ca 92081



9590 9402 7690 2122 7191 47

2. Article Number (Transfer from service label)

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PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

If YES, enter delivery address below: ☐ Yes ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery
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- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
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HERNANDEZ, CARTE

J & D Laboratories, Inc.
2710 Progress Street
Vista, Ca 92081

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PS Form 3800, April 2015 PSN 7530-02-000-9047

SENDER: COMPLETE THIS SECTION

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Captek Softgel International, Inc.
16218 Arthur Street
Cerritos, Ca 90703



9590 9402 7690 2122 7191 30

Article Number (Transfer from service label)

7022 2410 0000 2406 0224

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

E. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

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Mail Restricted Delivery (0)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

J & D Laboratories, Inc.
2710 Progress Street
Vista, Ca 92081



9590 9402 7690 2122 7191 47

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0217

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

E. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery (0)

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **April 23, 2024**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

C T Corporation System
330 N Brand Blvd.
Glendale, CA 91203

Registered for Defendant:
CAPTEK SOFTGEL INTERNATIONAL,
INC.
J&D LABORATORIES, INC.

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

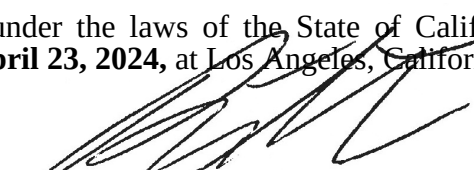
☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **April 23, 2024**, at Los Angeles, California.

Riley McIntire
Type/Print Name


Signature