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Attorneys for Plaintiff JOSH BARKSDALE on
behalf of himself and others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

JOSH BARKSDALE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

SUPER STORE INDUSTRIES, an unknown
business entity; and DOES 1 to 10, inclusive,

Defendants.

CASE NO. STK-CV-UOE-2024-0001669

[Assigned to: Hon. Judge Jayne Lee]

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

1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;
2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 221, 223, 1182, 1194, 1197, and 1198;
3. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198;
4. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, 1198;
5. Failure to Provide Suitable Facilities for Meal and Rest Breaks in Violation of Labor Code section 226.7;
6. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;
7. Failure to Timely Pay Wages During Employment in Violation of Labor Code Sections 204, 210;
8. Waiting Time Penalties Pursuant to Labor Code sections 201 and 203;
9. Violations of Business & Professions Code

FILED

2024 JUN -3 AM 10: 26

STEPHANE BOHRER, CLERK

BY **JESSICA CAYO**
DEPUTY

section 17200 *et seq.*; and
**10. Civil Penalties Pursuant to PAGA Labor
Code §§ 2698, et seq.**

DEMAND FOR JURY TRIAL

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1 Plaintiff, JOSH BARKSDALE (hereinafter “Plaintiff”) hereby submits his First Amended
2 Class and Representative Action Complaint against Defendants SUPER STORE INDUSTRIES;
3 and DOES 1 to 10 (hereinafter referred to as “Defendants”) on behalf of himself and the class of all
4 other similarly situated current and former employees of Defendants as follows:

5 **NATURE OF THE CASE**

6 1. This is a class and representative action brought pursuant to Private Attorneys
7 General Act (“PAGA”), Labor Code §§ 2698, *et seq.*, and California *Code of Civil Procedure* §
8 382, arising out of Defendants’ failure to provide their non-exempt employees with all wages, meal
9 and rest periods in compliance with the applicable wage order and/or the California Labor Code,
10 and by failing to comply with the applicable wage order and/or the Labor Code in regards to the
11 payment of wages.

12 2. Super Store Industries is a provider of dairy and beverage products and dry grocery
13 and frozen foods. Super Store Industries has two facilities in California. At all relevant times,
14 Defendants used and maintained uniform, standardized scheduling and timekeeping practices and
15 procedures for all non-exempt, hourly paid employees in California, including Plaintiff and others
16 similarly situated, regardless of their location or position.

17 3. Defendants have maintained practices across its locations which have failed and
18 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically,
19 Defendants have a company-wide policy of discouraging Plaintiff and other non-exempt employees
20 from recording hours worked off-the-clock. Specifically, Plaintiff and other non-exempt employees
21 would have their meal breaks interrupted and they would have to work off-the-clock.

22 4. Moreover, Defendants failed to pay overtime at the regular rate of pay. Plaintiff and
23 other non-exempt employees are also not paid all wages as the rate multiplied by the hours worked
24 yields a higher amount than what is actually on wage statements, thereby shorting the wages of
25 Plaintiff and other non-exempt employees. Moreover, total hours on wage statements incorrectly
26 include holiday, vacation, floating holiday and sick pay wages, and the math on several wage
27 statements is incorrect.

28 5. Defendants also maintained a company-wide policy whereby terminated employees

1 would not receive their final pay in a timely manner as mandated by California law.

2 6. Further, as a result of not having a breakroom, Plaintiff and other non-exempt
3 employees would have to walk several minutes outside to the parking lot for their meal and rest
4 breaks. As a result, meal and rest breaks were short.

5 7. In light of the foregoing, Defendants failed to provide Plaintiff and other non-
6 exempt employees with compliant wage statements and failed to timely pay all wages during
7 employment.

8 8. Plaintiff brings Causes of Action One through Nine (the “class claims”) as a class
9 action on behalf of himself and other similarly situated individuals who have worked for
10 Defendants in California, at any time from four-years prior to the filing of this complaint, through
11 the resolution of this action. Plaintiff, on his own behalf and on behalf of all Class Members, brings
12 the class claims pursuant to Labor Code sections 200-203, 204, 210, 221, 223, 226, 226.7, 500, 510,
13 512, 1174, 1194, 1194.2, 1197, 1198, 2802, the applicable wage order and under Business &
14 Professions Code sections 17200-17208, for unfair competition due to Defendants’ unlawful, unfair
15 and fraudulent business acts and practices.

16 9. Plaintiff brings Cause of Action Ten as a proxy of the State of California on behalf
17 of other aggrieved employees for penalties under the Private Attorneys General Act (“PAGA”).
18 PAGA provides that any civil penalty assessed and collected by the Labor and Workforce
19 Development Agency (LWDA) for violations of applicable provisions of the California Labor Code
20 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
21 behalf of himself and other current or former employees pursuant to procedures outlined in
22 California *Labor Code* § 2699.3. PAGA also provides that an aggrieved employee can bring a civil
23 action on behalf of other aggrieved employees for violation of any other Labor Code provision that
24 does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each
25 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
26 per pay period for each subsequent violation.

27 10. February 12, 2024, Plaintiff provided written notice to the LWDA and by certified
28 mail to Defendants of the specific provisions of the California Labor Code alleged to have been

1 violated, including the facts and theories to support the alleged violations. More than sixty-five (65)
2 calendar days have passed since the date notice was provided to the LWDA and Defendants.
3 Accordingly, Plaintiff has satisfied the administrative prerequisites under California *Labor Code* §
4 2699.3(a) to recover civil penalties against Defendants for violations of California *Labor Code*
5 identified in this Complaint.

6 11. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
7 engaged in, among other things a system of willful violations of the Labor Code and the applicable
8 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
9 employees the above stated rights and benefits.

10 PARTIES

11 12. Plaintiff, Josh Barksdale is an individual over the age of eighteen (18) and is now,
12 and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State
13 of California. During the relevant time period, Plaintiff worked for Defendants in Lathrop,
14 California from approximately 2021 through approximately June 4, 2023. Plaintiff worked as a
15 forklift operator and earned approximately \$26 per hour.

16 13. Plaintiff is informed and believes, and based thereon alleges, that Defendant Super
17 Store Industries is an unknown entity. Plaintiff is further informed and believes that at all times
18 relevant hereto, Defendant has transacted, and continues to transact, business throughout the State
19 of California.

20 14. Plaintiff is informed and believes, and based upon such information and belief
21 alleges, that Defendants are, now and/or at all times mentioned in this Complaint was in some
22 manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

23 15. Plaintiff is further informed and believes, and based upon such information and
24 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all
25 others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
26 complaints, injuries and/or damages alleged in this Complaint.

27 16. Plaintiff is informed and believes and based thereon alleges that at all times herein
28 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,

1 individuals, and partnerships, licensed to do business and actually doing business in the State of
2 California.

3 17. Plaintiff does not know the true names or capacities, whether individual, partner or
4 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
5 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
6 complaint when the true names and capacities are known. Plaintiff is informed and believes and
7 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
8 matters alleged herein and proximately caused Plaintiff and members of the general public and
9 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

10 18. At all times herein mentioned, each of said Defendants participated in the doing of
11 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
12 Defendants, and each of them, were the agents, servants and employees of each of the other
13 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
14 within the course and scope of said agency and employment.

15 19. Plaintiff is informed and believes and based thereon alleges that at all times material
16 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
17 venturer of, or working in concert with each of the other co-Defendants and were acting within the
18 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
19 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
20 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

21 20. At all times herein mentioned, Defendants, and each of them, were members of, and
22 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
23 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

24 21. At all times herein mentioned, the acts and omissions of various Defendants, and
25 each of them, concurred and contributed to the various acts and omissions of each and all of the
26 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
27 herein mentioned, Defendants, and each of them, ratified each and every act or omission
28 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and

1 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
2 damages as herein alleged.

3 22. The members of the Classes (as defined below), including the representative
4 Plaintiff named herein, have been employed during the Class Period in California. The practices
5 and policies which are complained of by way of this Complaint are enforced throughout the State
6 of California.

7 **JURISDICTION AND VENUE**

8 23. The Court has jurisdiction over this class action pursuant to article 6, section 10 of
9 the California Constitution and Code of Civil Procedure section 410.10.

10 24. Additionally, this Court has jurisdiction over Plaintiff's and the Classes' claims for
11 injunctive relief, including restitution of earned wages, arising from Defendants' unfair
12 competition under Business & Professions Code section 17203 and 17204. The Court also has
13 jurisdiction over Plaintiff's and the Classes' claims pursuant to the applicable provisions.

14 25. Additionally, the Court has jurisdiction over Plaintiff and other aggrieved
15 employees' claims for penalties sought pursuant to the Private Attorneys General Act of 2004,
16 Labor Code Section 2698, *et seq.*, as well as pursuant to the applicable provisions.

17 26. The Court has jurisdiction over Defendants because they are authorized to do
18 business in the State of California. Defendants do sufficient business with sufficient minimum
19 contacts in California, and/or otherwise intentionally avails itself of the California market through
20 the advertising, marketing and sale of goods and services, to render the exercise of jurisdiction over
21 Defendants by the California court consistent with traditional notions of fair play and substantial
22 justice.

23 27. Venue is proper in San Joaquin County because the acts which give rise to this
24 litigation occurred in this county and because Defendants have employed class members in this
25 county and transacts business in this county.

26 **FACTUAL ALLEGATIONS**

27 28. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

28 29. Defendants have engaged in, and continues to engage in, unfair business practices in

1 California by practicing, employing and utilizing the employment practices and policies outlined
2 above.

3 30. As a direct result of the wage and hour violations herein alleged, Plaintiff and
4 members of the Classes have suffered, and continue to suffer substantial losses related to the use
5 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
6 to compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective
7 damage in amounts according to proof at the time of trial.

8 ***Defendants' Failure to Pay Overtime Wages***

9 31. During the Class Period, upon information and belief, Defendants had, and
10 continues to have, a company-wide policy of failing to pay Plaintiff and members of the classes
11 overtime wages at the regular rate. Rather, Defendant failed to correctly calculate Plaintiff's and
12 class members' regular rate of pay. For example, on Plaintiff's wage statement with the pay date of
13 3/31/2023, Plaintiff was paid overtime at a rate of \$39.01, but the rate should be \$39.04. Moreover,
14 on Plaintiff's wage statement with the pay date of 5/26/23, Plaintiff was paid overtime at a rate of
15 \$39.01, but the rate should have been \$39.04.

16 32. Therefore, Plaintiff and members of the Classes were not all overtime wages.

17 ***Defendants' Failure to Pay all Wages and Minimum Wages***

18 33. As stated above, during the relevant time period, as a result of Defendants' policy of
19 limiting the amount of overtime employees could accrue, Plaintiff and members of the Classes
20 were not paid all wages. Moreover, Defendant paid floating holiday pay at the base rate of pay
21 rather than at the regular rate of pay. Defendant also subjected Plaintiff and members of the Classes
22 to work during their meal breaks.

23 34. Thus, Defendants did not pay at least minimum wages for all hours worked by
24 Plaintiff and class members. To the extent that the off-the-clock hours did not qualify for overtime
25 premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-
26 clock.

27 ***Failure to Provide Compliant Meal Periods***

28 35. As stated above, Defendants had, and continue to have, a company-wide policy of

1 failing to provide Plaintiff and other non-exempt employees from taking all timely, uninterrupted
2 meal periods to which they were entitled. As a result, Plaintiff and other non-exempt employees
3 were forced to work in excess of five (5) hours before taking a meal period and, at times, had their
4 meal periods interrupted. Further, as a result of not having a breakroom, Plaintiff and other non-
5 exempt employees would have to walk several minutes outside to the parking lot for their meal
6 breaks.

7 ***Defendants' Failure to Provide Compliant Rest Breaks***

8 36. During the relevant time period, Defendants regularly failed to authorize and permit
9 Plaintiff and members of the Classes to take a ten (10) minute rest period per each four (4) hour
10 period worked or major fraction thereof.

11 37. As a result of not having a breakroom, Plaintiff and other non-exempt employees
12 would have to walk several minutes outside to the parking lot for their rest breaks. Moreover, these
13 rest breaks were frequently interrupted.

14 ***Defendants' Failure to Provide Proper Facilities for Meal and Rest Periods***

15 38. As mentioned above, Defendants did not provide Plaintiff and members of
16 the Classes with areas where they could take their meal and rest breaks. Specifically,
17 Plaintiff alleges that there wasn't a breakroom.

18 ***Defendants' Failure to Provide Compliant Wage Statements***

19 39. During the relevant time period, Defendants have knowingly and intentionally
20 provided Plaintiff and members of the Classes with uniform, incomplete, and inaccurate wage
21 statements. For example, Defendants provided uniform wage statements to Plaintiff and members
22 of the Classes that fail to correctly list: gross wages earned; total hours worked; net wages earned;
23 and all applicable hourly rates in effect during the pay period, including rates of pay for overtime
24 wages and/or meal and rest period premiums, and the corresponding number of hours actually
25 worked.

26 40. Because Defendants failed to provide the correct net and gross wages earned,
27 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
28 members of the Classes have been prevented from verifying, solely from information on the wage

1 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members of
2 the Classes have had to look to sources outside of the wage statements themselves and reconstruct
3 time records to determine whether in fact they were paid correctly and the extent of underpayment,
4 thereby causing them injury.

5 41. Defendants also improperly included holiday, vacation, floating holiday and sick
6 pay hours into total hours worked. Further, the math on wage statements is incorrect. For example,
7 on Plaintiff's wage statement for the pay date of 3/3/23 the overtime rate multiplied by the number
8 of hours worked yields a different number than what is on the wage statement. Further, on
9 Plaintiff's wage statement with the date of 2/3/23 Plaintiff was paid for 17.25 hours of sick pay at a
10 rate of \$17.25 per hour. However, his wage statement shows he was paid \$448.99 rather than
11 \$449.02. Plaintiff's wage statement with the pay date of 4/28/23 also fails to include 'QP Regular'
12 hours into the total number of hours worked.

13 ***Defendants' Failure to Timely Pay all Wages During Employment***

14 42. Labor Code section 204 requires that all wages earned by any person in any
15 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
16 wages due upon termination of an employee, are due and payable between the 16th and the 26th
17 day of the month during which the labor was performed, and that all wages earned by any person in
18 any employment between the 16th and the last day, inclusive, of any calendar month, other than
19 those wages due upon termination of an employee, are due and payable between the 1st and the
20 10th day of the following month.

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

26 44. During the class period, Defendants willfully failed to pay Plaintiff and members of
27 the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest
28 period premiums, within the time periods specified by Labor Code section 204.

1 ***Defendants' Failure to Timely Pay Final Wage Upon Termination***

2 45. Defendants willfully failed to pay Plaintiff and members of the Classes who are no
3 longer employed by Defendants the earned and unpaid wages set forth above, including but not
4 limited to, overtime wages, minimum wages, and/or meal/rest period premiums, either at the time
5 of discharge, or within seventy-two (72) hours of their leaving Defendants' employ. Defendants
6 also did not provide Plaintiff with his final wages until two weeks after his date of termination.

7 ***Facts Regarding Willfulness***

8 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
9 and were advised by skilled lawyers, other professionals, employees with human resources
10 background and advisors with knowledge of the requirements of California wage and hour laws
11 and that at all relevant times, Defendants knew or should have known, that the Plaintiff Class
12 Members, including Plaintiff, were entitled to receive one hour of pay at the employee's regular
13 rate of compensation for each day that a meal and/or rest period was not provided and were and are
14 entitled to receive pay for all hours worked, accurate itemized wage statements, and final pay in a
15 timely manner.

16 ***Unfair Business Practices***

17 47. Defendants have further engaged in, and continues to engage in, unfair business
18 practices in California by practicing, employing and utilizing the unlawful employment practices
19 and policies outlined above.

20 48. As a direct result of the wage and hour violations herein alleged, Plaintiff and
21 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
22 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
23 seeking to compel Defendants to perform their obligations under state law, all to Plaintiff's and the
24 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

25 ***Plaintiff's Exhaustion of Administrative Remedies***

26 49. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
27 section 2699.3.

28 50. By letter dated February 12, 2024, required notice was provided to the Labor and

1 Workforce Development Agency (“LWDA”) and Defendants, of the specific provisions of the
2 Labor Code alleged to have been violated, including the facts and theories to support the alleged
3 violations.

4 51. More than 65 days have passed since the date notice was provided to the LWDA
5 and Defendants, and Plaintiff has received no response from the LWDA indicating that it plans to
6 investigate.

7 52. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
8 Labor Code Section 2699.3(a) to recover civil penalties against Defendants for violations of
9 California Labor Code identified in this Complaint.

10 **CLASS ACTION ALLEGATIONS**

11 53. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

12 54. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
13 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
14 commonality, typicality, adequacy, predominance, and superiority requirements of those
15 provisions.

16 55. Plaintiff brings this suit as a class action on behalf of two classes of individuals
17 defined as follows (collectively the “Classes”):

18 56. Plaintiff Class: All persons who have been, or currently are, employed by
19 Defendants and who held, or hold, job positions which Defendants have classified as “non-exempt”
20 employees in the State of California, at any time since four years prior to filing this action, through
21 the date judgment is rendered in this action.

22 57. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
23 during the Class Period.

24 58. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
25 the class period hundreds of class members have been employed by Defendants as non-exempt
26 employees in the State of California. Because so many persons have been employed by Defendants
27 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
28 impossible and/or impracticable.

1 59. Common Questions of Law and/or Fact: Common questions of law and fact exist as
2 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
3 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
4 adjudication of Class Members' claims are as follows:

- 5 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of
- 6 California wage and hour statutes;
- 7 b. Whether Defendants failed to pay Plaintiff and Class Members for all hours worked;
- 8 c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- 9 d. Whether Defendants had a standard policy of not providing compliant meal breaks
- 10 and premiums to Plaintiff and members of the Plaintiff Class;
- 11 e. Whether Defendants had a standard policy of not providing compliant rest breaks
- 12 and premiums to Plaintiff and members of the Plaintiff Class;
- 13 f. Whether Defendants had a standard policy of not providing Plaintiff and members
- 14 of the Plaintiff Class with meal and rest break facilities;
- 15 g. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
- 16 members of the Plaintiff Class with true and proper wage statements upon payment
- 17 of wages, in violation of Labor Code section 226;
- 18 h. Whether Defendants failed to timely pay wages to Plaintiff and members of the
- 19 Plaintiff Class during their employment;
- 20 i. Whether Defendants unlawfully and/or willingly failed to timely pay Plaintiff and
- 21 the Terminated Sub Class upon termination;
- 22 j. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,
- 23 the proper measure of such damages, as well as interest, penalties, costs, attorneys'
- 24 fees, and equitable relief;
- 25 k. Whether Defendants' conduct as alleged herein violates the Unfair Business
- 26 Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

27 60. Typicality: The claims of the named Plaintiff are typical of the claims of the
28 members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their

1 non-exempt employees with meal and rest periods and all wages in compliance with the applicable
2 wage order, or premium compensation at the regular rate in lieu thereof, failing to provide them
3 with proper wages and overtime, and failing to provide them with compliant wage statements has
4 caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages.
5 Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed
6 Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising
7 from Defendants' common policies, practices, procedures, protocols, routines, and rules which
8 were applied to other Class Members as well as Plaintiff. Plaintiff seeks recovery for the same type
9 of losses, injuries, and damages as were suffered by other members of the proposed class.

10 61. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
11 classes because he is a member of the class, and his interests do not conflict with the interests of
12 the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the
13 prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this
14 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
15 adequately be protected by Plaintiff and his attorneys.

16 62. Superiority of Class Action: A class action is superior to other available methods for
17 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
18 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
19 to proceed on an individual basis, because this would potentially result in hundreds of individual,
20 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
21 contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable
22 allocation of recovery among those with equally meritorious claims. By contrast, the class action
23 device presents far fewer management difficulties, and provides the benefit of a single
24 adjudication, economics of scale, and comprehensive supervision by a single court.

25 63. The various claims asserted in this action are additionally or alternatively certifiable
26 under the provisions of the Code of Civil Procedure section 382 because:

27 a. The prosecution of separate actions by hundreds of individual class members would
28 create a risk or varying adjudications with respect to individual class members, thus establishing

incompatible standards of conduct for Defendants, and

b. The prosecution of separate actions by individual class members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other class members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

FIRST CAUSE OF ACTION

Unpaid Overtime

(By Plaintiff and Members of the Putative Class Against Defendants)

64. Plaintiff incorporates herein by reference the allegations set forth above.

65. At all times relevant herein, which comprise of the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all overtime hours worked.

66. 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 one-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.

67. Defendants willfully failed to pay all overtime wages owed to Plaintiff and members of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in 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 compensated. Defendants knew or should have known that as a result of company-wide practices and/or policies, that prevents Plaintiff and members of the Classes from earning overtime, Plaintiff and members of the Classes were performing assigned duties off-the-

1 clock during meal periods, and were suffered or permitted to perform work for which they were not
2 paid. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or more
3 or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
4 premium pay. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all
5 of the overtime hours they actually worked. Moreover, Defendants failed to pay overtime wages at
6 the correct regular rate of pay.

7 68. Defendants' failure to pay Plaintiff and members of the Classes the balance of
8 overtime compensation, as required by California law, violates the provisions of Labor Code
9 sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
10 attorney's fees, costs, and interest thereon.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Pay All Wages**

13 **(By Plaintiff and Members of the Putative Class Against Defendants)**

14 69. Plaintiff incorporates herein by reference the allegations set forth above.

15 70. At all times relevant herein, which comprise of the time period not less than four (4)
16 years preceding the filing of this action, Defendants was required to compensate their hourly
17 employees for all hours worked.

18 71. For at least the four (4) years preceding the filing of this action, Defendants failed to
19 compensate employees for all hours worked. Defendants implemented policies that actively
20 prevented employees from being compensated for all time worked by subjecting Plaintiff and
21 members of the Classes to work off-the-clock as mentioned above. Moreover, Defendants failed to
22 pay floating holiday pay the regular rate of pay.

23 72. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff
24 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
25 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
26 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and
27 206.

28 73. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the

1 time during which an employee is subject to the control of an employer and includes all the time
2 the employee is suffered or permitted to work, whether or not required to do so.”

3 74. Defendants suffered or permitted Plaintiff and members of the Classes to work
4 portions of the day for which Defendants failed to compensate them. This includes time spent
5 under Defendants’ control prior to clocking in, after clocking out, and during meal periods

6 75. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any
7 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
8 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
9 ... including interest thereon, reasonable attorney’s fees, and costs of suit.”

10 76. Labor Code section 1194.2(a) provides in relevant part: “In any action under section
11 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
12 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
13 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

14 77. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than
16 the minimum so fixed is unlawful.”

17 78. Plaintiff is informed and believes, and therefore alleges, that Defendants’
18 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
19 spent performing their job duties.

20 79. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
21 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
22 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

23 80. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
24 for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC
25 wage order section 3; and Business & Professions Code.

26 81. During the applicable time period, Defendants have and continues to have a pattern
27 and practice of not providing its employees all wages, by failing to include all compensable time.

28 82. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff

1 Class have been damaged in an amount according to proof at time of trial.

2 **THIRD CAUSE OF ACTION**

3 **Non-Compliant Meal Breaks**

4 **(By Plaintiff and Members of the Putative Class Against Defendants)**

5 83. Plaintiff hereby incorporates by reference each and every one of the allegations
6 contained in the preceding paragraphs as if the same were fully set forth herein.

7 84. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
8 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
9 not less than thirty (30) minutes without duty.

10 85. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
11 Defendants routinely failed to provide Plaintiff and the members of the Classes with such meal
12 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not
13 waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of the
14 Classes with meal periods required by Labor Code sections 226.7, 512, 516 and the applicable
15 IWC wage order section 10, and categorically failed to pay any and all meal period wages due.

16 86. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
17 and the applicable IWC wage order section 10(F), in the amount of one additional hour of pay at
18 the regular rate for each work day that the meal period is/was not provided to Plaintiff and any
19 member of the Classes, the cumulative sum of which is to be determined at trial.

20 87. Under the foregoing, California employers must provide meal periods and authorize
21 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
22 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
23 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-
24 related duties,” including the duty to remain “on call,” and they must be “free from employer
25 control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to
26 use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*
27 (2012) 53 Cal.4th 1004, 1038-39.

28 88. When employees must either “remain at the ready and capable of being summoned

1 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
2 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
3 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus*, *supra*, 2
4 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid*.

5 89. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
6 rest break cases that have affirmed California’s broad, protective standard for employees.¹

7 90. Moreover, as the mere existence of a facially lawful meal and rest break policy is
8 unavailing if there are practical constraints and pressures on employees to perform their duties in
9 ways that omit breaks. See *Brinker*, *supra*, 53 Cal.4th at 1040.

10 91. Yet Defendants did and does not provide Plaintiff and members of the Classes with
11 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
12 the fifth hour of work and again by the tenth hour of work.

13 92. Rather, Plaintiff alleges that meal breaks were frequently provided late, were missed
14 and/or were interrupted.

15 93. Thus, Defendants have failed to perform its obligations to provide Plaintiff and the
16 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and
17 a second meal period by the end of the tenth hour of work. Defendants have also failed to pay
18 Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-
19 duty meal period that they have been denied.

20 94. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
21 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
22 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
23 employee’s “regular rate of pay” instead of their base hourly rate.

24
25 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
26 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
27 *Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug.
28 31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus*.]”)

1 95. Defendants knew or should have known that as a result of its policies and/or
2 practices, that Plaintiff and members of the Classes were not actually relieved of all duties to take
3 timely, uninterrupted meal periods. Defendants further knew or should have known that it did not
4 pay Plaintiff and members of the Classes all meal period premiums when meal periods were
5 missed, late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-wide
6 practice and/or policy of not paying meal period premiums owed when compliant meal periods are
7 not provided. Because of this practice and/or policy, Plaintiff and members of the Classes have not
8 received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendants
9 failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

10 96. Plaintiff and members of the Classes are entitled to civil penalties, attorney's fees,
11 costs, and interest thereon.

12 **FOURTH CAUSE OF ACTION**

13 **Non-Compliant Rest Breaks**

14 **(By Plaintiff and Members of the Putative Class Against Defendants)**

15 97. Plaintiff hereby incorporates by reference each and every one of the allegations
16 contained in the preceding paragraphs as if the same were fully set forth herein.

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

26 99. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
27 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
28 and every four (4) hours or major fraction thereof worked during the workday.

100. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants routinely failed to provide Plaintiff and the members of the Classes with such paid rest periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members with rest periods required by Labor Code sections 226.7, 512, and 516, the applicable IWC wage order section 11 and categorically failed to pay any and all rest period wages due. Specifically, rest breaks were never provided.

101. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and the applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff and any member of the Classes, the cumulative sum of which is to be determined at trial.

102. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

FIFTH CAUSE OF ACTION

Failure to Provide Suitable Facilities for Meal and Rest Breaks

(By Plaintiff and Members of the Putative Class Against Defendants)

103. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

104. Labor Code section 226.7(c) provides:

“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

105. The applicable IWC Wage Order, sections 11(D) and (E) provide:

“(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.”

106. The applicable IWC Wage Order section 13(B) provides: “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

107. Because Defendant failed to provide a breakroom, Defendants violated the Labor Code and the wage order by failing to provide a suitable area in which Plaintiff and members of the Classes could eat on premises or take breaks in designated areas.

108. Defendants are therefore liable for one hour of pay as compensation in lieu of a compliant break for each day that a non-compliant meal or rest period was taken outside of a suitable on-premises area designated for the purpose of eating meals.

109. Plaintiff will seek sums to account for the unpaid premiums owed to him and the members of the Classes in an amount according to proof.

SIXTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records

(By Plaintiff and Members of the Putative Class Against Defendants)

110. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

111. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires employers to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

112. 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 section 226(a), then

1 the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period
2 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period,
3 not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates
4 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
5 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
6 the employer fails to provide the employee a wage statement or fails to keep the required records
7 pursuant to section 226(a).

8 113. Defendants knowingly and intentionally failed to furnish Plaintiff and the members
9 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
10 the applicable IWC Wage order section 6(B).

11 114. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
12 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
13 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
14 applicable hourly rates in effect during each respective pay period and the corresponding number
15 of hours worked at each hourly rate by each respective individual.

16 115. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
17 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiff
18 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
19 missing hours worked, and missed meal and rest-break premiums, as illustrated above.

20 116. As a result of not having kept accurate records, Plaintiff and the Class Members
21 suffered injuries in the form of confusion over whether they received all wages owed to them, and
22 difficulty and expense in reconstructing pay records in addition to other injuries which may come
23 to light during the discovery process.

24 117. Labor Code section 1198 provides that the maximum hours of work and the
25 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
26 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
27 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
28 the order is unlawful.” Pursuant to the applicable IWC Wage order, employers are required to keep

1 accurate time records showing when the employee begins and ends each work period and meal
2 period.

3 118. During the class period, Defendants failed, on a company-wide basis, to keep
4 accurate records of work and meal period start and stop times for Plaintiff and members of the
5 Classes, in violation of Labor Code section 1198. Plaintiff and the members of the Classes herein
6 seek damages and penalties pursuant to Labor Code section 226(e) for Defendants' violations of
7 Labor Code section 226(a).

8 119. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
9 and an award of reasonable attorneys' fees and costs pursuant to Labor Code section 226(h).

10 **SEVENTH CAUSE OF ACTION**

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

12 **(By Plaintiff and Members of the Putative Class Against Defendants)**

13 120. Plaintiff hereby incorporates by reference each and every one of the allegations
14 contained in the preceding paragraphs as if the same were fully set forth herein.

15 121. Labor Code section 204 requires that all wages earned by any person in any
16 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and the 26th
18 day of the month during which the labor was performed, and that all wages earned by any person in
19 any employment between the 16th and the last day, inclusive, of any calendar month, other than
20 those wages due upon termination of an employee, are due and payable between the 1st and the
21 10th day of the following month.

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

27 123. During the class period, Defendants willfully failed to pay Plaintiff and members of
28 the Classes all wages due including, but not limited to, all wages, and/or meal and rest period

1 premiums, within the time periods specified by Labor Code section 204.

2 124. Labor Code section 210 provides:

3 210. (a) In addition to, and entirely independent and apart from, any other penalty
4 provided in this article, every person who fails to pay the wages of each employee
5 as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
6 1197.5, shall be subject to a penalty as follows:

7 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
8 employee.

9 (2) For each subsequent violation, or any willful or intentional violation, two
10 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
11 amount unlawfully withheld.

12 125. As a proximate result of the above-mentioned violations, Plaintiff and the Plaintiff
13 Class have been damaged in an amount according to proof at time of trial. Plaintiff and the
14 members of the Classes herein seek damages and penalties pursuant to Labor Code section 210.

15 **EIGHTH CAUSE OF ACTION**

16 **Waiting Time Penalties**

17 **(By Plaintiff and Members of the Terminated Sub Class Against Defendants)**

18 126. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
19 forth herein.

20 127. At all times, relevant herein, Defendants were required to pay their employees all
21 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
22 section 201-203.

23 128. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the
24 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
25 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

26 129. Labor Code sections 201 and 202 provide that if an employer discharges an
27 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
28 and that if an employee voluntarily leaves his or her employment, his or her wages shall become

1 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
2 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
3 entitled to his or her wages at the time of quitting.

4 130. On information and belief, Defendants have a company-wide practice or policy of
5 paying departing employees their final wages late, instead of adhering to the time requirements set
6 forth in Labor Code sections 201 and 202.

7 131. Specifically, Defendants willfully failed to pay Plaintiff and members of the
8 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
9 overtime wages, minimum wages, and/or meal rest period premiums, either at the time of
10 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

11 132. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
12 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

13 **NINTH CAUSE OF ACTION**

14 **Violation of California**

15 **Business and Professions Code Section 17200 et seq.**

16 **(By Plaintiff and the Members of the Plaintiff Class Against Defendants)**

17 133. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
18 forth herein.

19 134. Business and Professions Code section 17200 defines unfair competition to include,
20 "unlawful, unfair or fraudulent business practices."

21 135. Plaintiff and all proposed Class Members are "persons within the meaning of
22 Business and Professions Code section 17204, who have suffered injury in fact and have lost
23 money or property as a result of Defendants' unfair competition.

24 136. Defendants have been committing, and continues to commit, acts of unfair
25 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
26 described in this Complaint, including, but not limited to:

27 a) violations of Labor Code sections 510, 1198;

28 b) violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197,

1 1198;

2 c) violations of Labor Code sections 226.7, 512, 516, and 1198;

3 d) violations of Labor Code sections 226, 1174;

4 e) violations of Labor Code sections 201 and 202;

5 f) violations of Labor Code section 204; and

6 g) violations of Labor Code section 1198.

7 137. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
8 Defendants have reaped and continues to reap unfair benefits and illegal profits at the expense of
9 Plaintiff and proposed Class Members. Defendants' unlawful, unfair, and/or fraudulent conduct has
10 also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and
11 competitors.

12 138. Business and Professions Code section 17203 provides that the Court may restore to
13 an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or
14 fraudulent business acts or practices.

15 139. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or
16 fraudulent activity alleged herein.

17 140. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff
18 Class are entitled to recover pre-judgment interest on wages earned, but not paid.

19 141. Plaintiff further seeks an order requiring an audit and accounting of the payroll
20 records to determine the amount of restitution of all unpaid wages owed to himself and members of
21 the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds
22 to be paid to current and former employees that can be identified and located pursuant to a court
23 order and supervision.

24 142. Plaintiff seeks restitution for himself and all others similarly situated of these
25 amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of
26 Civil Procedure section 1021.5.

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1 **TENTH CAUSE OF ACTION**

2 **Civil Penalties Pursuant to PAGA (*Labor Code* §§ 2698, *et seq.*)**

3 **(By Plaintiff and all Aggrieved Employees, Against Defendants)**

4 143. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
5 forth herein.

6 144. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
7 California *Labor Code* §§ 2698-99) applied to Defendants' employment of Plaintiff and the
8 proposed Class Members.

9 145. At all times set forth herein, California *Labor Code* § 2699(a) has provided that any
10 provision of law under the California Labor Code that provides for a civil penalty to be assessed
11 and collected by the Labor and Workforce Development Agency (LWDA) for violations of the
12 California Labor Code may, as an alternative, be recovered through a civil action brought by an
13 aggrieved employee on behalf of herself and other current or former employees pursuant to
14 procedures outlined in California *Labor Code* § 2699.3.

15 146. At all times set forth herein, PAGA has also provided that for the violation of any
16 Labor Code provision that does not itself contain a civil penalty, there are established civil
17 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
18 each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

19 147. A civil action under PAGA may be brought by an "aggrieved employee," any
20 person that was employed by the alleged violator and against whom one or more of the alleged
21 violations was committed.

22 148. Defendants have been committing, and continue to commit, violations of the
23 California Labor Code, including, but not limited to:

- 24 a. California *Labor Code* §§ 510, 1198;
25 b. California *Labor Code* §§ 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
26 c. California *Labor Code* §§ 226.7, 512, 516, and 1198;
27 d. California *Labor Code* §§ 226, 1174;
28 e. California *Labor Code* § 201 and 202;

1 f. California *Labor Code* § 204; and

2 g. California *Labor Code* Labor Code § 1198.

3 149. Plaintiff was employed by Defendants and the alleged violations have been
4 committed against him during his time of employment and he is, therefore, an aggrieved employee.
5 Plaintiff and other employees are “aggrieved employees” as defined by California *Labor Code*
6 §2699(c) in that they are all current or former employees of Defendants, and one or more of the
7 alleged violations were committed against them.

8 150. Pursuant to California *Labor Code* § 2699.3, aggrieved employees, including
9 Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have
10 been met:

11 a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”)
12 to the LWDA and the employer of the specific provisions of the California Labor
13 Code alleged to have been violated, including the facts and theories to support the
14 alleged violations;

15 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
16 the aggrieved employee by certified mail that it does not intend to investigate the
17 alleged violations sixty (60) calendar days of the postmark date of the Employee’s
18 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
19 within sixty-five (65) calendar days of the postmark date of the Employee’s Notice,
20 the aggrieved employee may commence a civil action pursuant to California Labor
21 Code §2699 to recover civil penalties in addition to any other penalties to which the
22 employee may be entitled.

23 151. On February 12, 2024, Plaintiff provided written notice to the LWDA and by
24 certified mail to Defendants of the specific provisions of the California Labor Code alleged to have
25 been violated, including the facts and theories to support the alleged violations.

26 152. More than 65 calendar days have passed since the date notice was provided to the
27 LWDA and Defendants. Accordingly, Plaintiff has satisfied the administrative prerequisites under
28 California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for

violations of California Labor Code identified in this Complaint.

153. Accordingly, Plaintiff and the other aggrieved employees are entitled to and seek to recover civil penalties for Defendants' violation of the Labor Code during the applicable limitations period.

154. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Aggrieved Employees, and the Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiff Class and Terminated Sub-Class;
2. For an order appointing Plaintiff's counsel as class counsel
3. Designation of Plaintiff as the class representative of the Plaintiff Class and Terminated Sub Class;
4. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants;
5. Prejudgment and post judgment interest on all sums awarded;
6. For compensatory damages;
7. For penalties pursuant to Labor Code sections 200, 210, 226, 226.3, 226.7, 2699;
8. For interest accrued to date;
9. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226, 1194 and 2699(g)(1);
10. For reasonable attorneys' fees pursuant to Labor Code section 226, 218.5, 2699(g)(1), and Code of Civil Procedure section 1021.5, and/or other applicable law; and
11. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law;
 - a) Labor Code sections 510, 1198 for failing to pay overtime;
 - b) Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221,

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- 223, for failing to pay all wages;
 - c) Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant meal and rest breaks, and suitable facilities for meal and rest breaks;
 - d) Labor Code sections 226, 1174 for failing to provide compliant wage statements;
 - e) Labor Code sections 204 for failing to pay wages timely during employment;
 - f) Labor Code sections 201 and 202 for failing to pay wages at termination;
 - g) Business & Professions Code sections 17200-08 for violating the provisions set forth herein above.
12. For all such other and further relief that the Court may deem just and proper.

DATED: May 31, 2024

BRADLEY/GROMBACHER, LLP

By: _____

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Corey S. Smith, Esq.

Attorneys for Plaintiff and others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to the extent authorized by law.

DATED: May 31, 2024

BRADLEY/GROMBACHER, LLP

By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Corey S. Smith, Esq.

Attorneys for Plaintiff and others similarly
situated