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individually and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ELISEO JUAREZ ORTIZ, individually and
on behalf of all others similarly situated,

PLAINTIFF,

v.

ENEVER, INC., a California corporation; and
DOES 1 through 50, inclusive,

DEFENDANTS.

CASE NO.: 30-2024-01392103-CU-OE-CXC
*Assigned for all purposes to the Honorable
Melissa R. McCormick; Dept. CX104*

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

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

DEMAND FOR JURY TRIAL

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

5 **JURISDICTION AND VENUE**

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

11 2. Plaintiff’s First through Fifth Causes of Action are brought as a class action on behalf of
12 himself and similarly situated current and former employees of Defendants (hereinafter collectively
13 referred to as the “Class” or “Class Members,” as defined more fully in paragraph 21, below) pursuant
14 to Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed
15 the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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

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

28 5. This Court has jurisdiction over Defendants because, upon information and belief,

1 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
2 intentionally avail themselves of the California market so as to render the exercise of jurisdiction over
3 them by the California courts consistent with traditional notions of fair play and substantial justice.

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

6 **PARTIES**

7 7. Plaintiff is a resident of the State of California. At all times relevant to this action,
8 Plaintiff was employed by Defendants in the County of Orange, State of California as an hourly, non-
9 exempt employee. During his employment, Plaintiff worked for Defendants as a fabric cutter at
10 Defendants' facility located in Santa Ana, California.

11 8. Defendant ENEVER, INC. is, and at all times herein mentioned was, a corporation
12 organized and existing under the laws of the State of California, and registered to do business in the
13 State of California.

14 9. Plaintiff is informed and believes that Defendant ENEVER, INC. is a wholesale
15 manufacturer of advertising, marketing, and promotional products, including canopy tents, table covers,
16 wind flags, clothing and accessories, and other products.

17 10. Plaintiff is informed and believes that Defendant ENEVER, INC. does business under
18 the fictitious names "Ameramark" and/or "Wesco USA."

19 11. Plaintiff is informed and believes that according to publicly released data, Defendant
20 ENEVER, INC. received at least two Paycheck Protection Program ("PPP") loans totaling over
21 \$464,000.00 for approximately 30 jobs. The full amount of these loans, including interest, has been
22 forgiven.¹

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

27
28 ¹ See, <https://projects.propublica.org/coronavirus/bailouts/loans/enever-inc-6802377304> and
<https://projects.propublica.org/coronavirus/bailouts/loans/enever-inc-dba-wesco-usa-3600608709>

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

7 13. Defendants ENEVER, INC. and DOES 1 thorough 50, inclusive, are collectively referred
8 to herein as "Defendants."

9 14. Defendants are and at all times herein mentioned were, (a) conducting business in the
10 County of Orange, State of California, and (b) the employer of Plaintiff consistent with the California
11 Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s), including IWC Wage Order
12 1-2001.

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

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

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

27 18. Plaintiff is informed and believes, and based thereon alleges, that in perpetrating the acts
28 and omissions alleged herein, Defendants, and each of them, acted pursuant to, and in furtherance of,

1 their policies and practices of not paying Plaintiff, the Class, and the Aggrieved Employees all wages
2 earned and due, through methods and schemes which include, but are not limited to: failing to provide
3 meal periods; failing to authorize rest breaks; failing to properly maintain records; failing to provide
4 accurate itemized statements for each pay period; failing to timely pay final wages; failing to pay timely
5 wages during employment; and requiring, permitting, or suffering the employees to work off the clock,
6 in violation of the California Labor Code (“Labor Code”) and applicable IWC Wage Order(s).

7 19. Plaintiff is informed and believes, and based thereon alleges, that in accordance with
8 Labor Code section 558.1, Defendants, and any person acting on behalf of Defendants, are liable for
9 violating, or causing to violate, any provision regulating hours and days of work in any order of the
10 Industrial Welfare Commission, or any applicable provision of the Labor Code.

11 **CLASS ACTION ALLEGATIONS**

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

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

19 22. Plaintiff reserves the right to establish other subclasses as appropriate.

20 23. The Class is ascertainable and there is a well-defined community of interest in the
21 litigation:

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

27 b. Typicality: Plaintiff’s claims are typical of all other Class Members demonstrated herein.
28 Plaintiff and the Class Members worked as hourly, non-exempt employees for

Defendants in California, including at Defendants' facilities in Santa Ana, California. Plaintiff and the other similarly situated Class Members were employed by Defendants at the same facility and were subjected to the same policies and practices, and endured similar violations at the hands of Defendants.

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

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

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

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

a. Whether Defendants deprived Plaintiff and the other Class Members of meal and/or rest periods or required Plaintiff and the other Class Members to work during meal and/or rest periods without compensation;

b. Whether Defendants failed to pay meal period premium wages to Plaintiff and the other Class Members when they were not provided legally compliant meal periods;

- 1 c. Whether Defendants failed to pay rest period premium wages to Plaintiff and the other
2 Class Members when they were not authorized and permitted to take legally compliant
3 rest periods;
- 4 d. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff and
5 the other Class Members for all hours worked, and for missed, short, late or interrupted
6 meal periods and rest breaks in violation of California law;
- 7 e. Whether Defendants failed to pay all wages due to Plaintiff and the other Class Members
8 within the time required upon their discharge or resignation from employment;
- 9 f. Whether Defendants' failure to pay wages, without abatement, or reduction, in
10 accordance with the California Labor Code was willful;
- 11 g. Whether Defendants complied with wage statement reporting as required by the
12 California Labor Code, including section 226;
- 13 h. Whether Defendants engaged in unfair business practices in violation of California
14 Business & Professions Code section 17200, *et seq.* based on their improper withholding
15 of compensation and deduction of wages;
- 16 i. The appropriate amount of damages, restitution, and/or monetary penalties resulting from
17 Defendants' violation of California law; and
- 18 j. Whether Plaintiff and the other Class Members are entitled to compensatory damages
19 pursuant to the California Labor Code.

20 **GENERAL ALLEGATIONS**

21 25. Plaintiff is informed and believes that Defendants are wholesale manufacturers of
22 advertising, marketing, and promotional products and do business under the name "Ameramark" and
23 "Wesco USA."

24 26. Defendants employed Plaintiff as an hourly, non-exempt employee from approximately
25 July 2017 to approximately March 2024.

26 27. At all relevant times set forth herein, Defendants employed Plaintiff, the Class, and the
27 Aggrieved Employees as hourly-paid or non-exempt employees.

28 28. Throughout the time period involved in this case, Defendants had the authority to hire

1 and terminate Plaintiff, the Class, and the Aggrieved Employees; to directly, or indirectly, control work
2 rules, working conditions, wages, and working hours; and to directly, or indirectly, control the terms of
3 employment of Plaintiff, the Class, and the Aggrieved Employees.

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

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

13 31. On information and belief, throughout the time period involved in this case, Defendants
14 have implemented policies and practices which failed to provide Plaintiff, the Class, and the Aggrieved
15 Employees with timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff, the
16 Class, and the Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish
17 control over Plaintiff, the Class, and the Aggrieved Employees during their meal periods, regularly failed
18 to permit Plaintiff, the Class, and the Aggrieved Employees a reasonable opportunity to take their meal
19 periods, and regularly impeded or discouraged Plaintiff, the Class, and the Aggrieved Employees from
20 taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work
21 and/or from taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of
22 work for shifts lasting more than ten (10) hours. For example, when Plaintiff, the Class, and the
23 Aggrieved Employees typically began their shifts at 7:00 a.m., they were not provided a meal period
24 before the end of the fifth hour of work.

25 32. On information and belief, throughout the time period involved in this case, Defendants
26 did not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take meal
27 periods under California law. Moreover, on information and belief, Defendants systematically
28 disregarded their own written policies regarding the provision and timing of meal periods for Plaintiff,

1 the Class, and the Aggrieved Employees.

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

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

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

26 36. On information and belief, throughout the time period involved in this case, Defendants
27 failed to pay Plaintiff, the Class, and the Aggrieved Employees premium wages for rest periods that
28 were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should

1 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all rest
2 periods or payment of one additional hour of pay at their regular rate of pay when a rest period was
3 missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to
4 authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest periods,
5 and failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their
6 regular rate of pay when a rest period was missed, short, late and/or interrupted. Although Plaintiff
7 complained about late, interrupted, and missed meal periods, nothing was done by Defendants to address
8 or correct the violations.

9 37. On information and belief, throughout the time period involved in this case, Defendants
10 regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon
11 discharge or resignation. Defendants knew or should have known that Plaintiff, the Class, and the
12 Aggrieved Employees were entitled to receive all wages owed to them upon termination within the time
13 permissible under California Labor Code section 202. Plaintiff, the Class, and the Aggrieved Employees
14 did not receive payment of all final wages owed to them upon discharge or resignation, including
15 premium wages within any time permissible under California Labor Code section 202.

16 38. On information and belief, throughout the time period involved in this case, Defendants
17 regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time
18 permissible under California law, including, *inter alia*, California Labor Code section 204. Defendants
19 knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to
20 receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved
21 Employees did not receive payment of all wages, including meal period premiums and rest period
22 premiums.

23 39. On information and belief, throughout the time period involved in this case, Defendants
24 regularly failed to provide complete or accurate wage statements to Plaintiff, the Class, and the
25 Aggrieved Employees. Defendants knew or should have known that Plaintiff, the Class, and the
26 Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance
27 with California law, but, in fact, they did not receive complete and accurate wage statements from
28 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours worked,

1 the actual gross wages earned, and premium pay.

2 40. On information and belief, throughout the time period involved in this case, Defendants
3 regularly failed to keep complete or accurate payroll records for Plaintiff, the Class, and the Aggrieved
4 Employees. Defendants knew or should have known that Defendants were required to keep complete
5 and accurate time payroll records for Plaintiff, the Class, and the Aggrieved Employees in accordance
6 with California law, but, in fact, did not keep complete and accurate time and payroll records.

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

10 42. On information and belief, throughout the time period involved in this case, Defendants
11 knew or should have known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved
12 Employees pursuant to California law. Defendants had the financial ability to pay such compensation,
13 but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff, the Class,
14 and the Aggrieved Employees that they paid all wages owed to them, all in order to increase Defendants'
15 profits.

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

19 **FIRST CAUSE OF ACTION**

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

21 **(Against All Defendants)**

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

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

27 46. At all relevant times, California Labor Code section 226.7 provides that no employer
28 shall require an employee to work during any meal or rest period mandated by an applicable order of

1 the California IWC.

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

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

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

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

20 51. During the relevant time period, Defendants intentionally and willfully required Plaintiff
21 and the other Class Members to miss their meal periods and to take meal periods that were late,
22 shortened, or interrupted, and failed to compensate Plaintiff and the other Class Members the full meal
23 period premium for missed, shortened, late, or interrupted meal periods.

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

26 53. Defendants' conduct violates the applicable IWC Wage Order(s) and California Labor
27 Code sections 226.7 and 512(a).

28 54. Pursuant to the applicable IWC Wage Order(s) and California Labor Code section

1 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one (1)
2 additional hour of pay at the employee's regular rate of compensation for each work day that the meal
3 period was not provided.

4 **SECOND CAUSE OF ACTION**

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

6 **(Against All Defendants)**

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

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

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

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

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

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

27 61. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
28 Members the full rest period premium due pursuant to California Labor Code section 226.7 for work

1 performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class
2 Members from taking uninterrupted rest periods.

3 62. Defendants' conduct violates applicable IWC Wage Order(s) and California Labor Code
4 section 226.7.

5 63. Pursuant to the applicable IWC Wage Order(s) and California Labor Code section
6 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
7 hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period
8 was not provided.

9 **THIRD CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

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

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

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

28 68. California Labor Code section 203 provides that if an employer willfully fails to pay

1 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
2 as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but
3 the wages shall not continue for more than thirty (30) days.

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

7 **FOURTH CAUSE OF ACTION**

8 **(Violation of California Labor Code § 226(a))**

9 **(Against All Defendants)**

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

12 71. At all material times set forth herein, California Labor Code section 226(a) provides that
13 every employer shall furnish each of its employees an accurate itemized statement in writing showing
14 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
15 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
16 provided that all deductions made on written orders of the employee may be aggregated and shown as
17 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
18 the name of the employee and his or his social security number, (8) the name and address of the legal
19 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee. The deductions made from
21 payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month,
22 day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the
23 employer for at least three years at the place of employment or at a central location within the State of
24 California.

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

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

75. Plaintiff and the Class 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 per employee.

FIFTH CAUSE OF ACTION

(Against All Defendants)

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

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

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

81. A violation of California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' systematic

1 policies and practices of requiring employees, including Plaintiff and the Class, to work without legally
2 compliant meal periods and rest breaks violate California Labor Code sections 226.7 and 512(a).
3 Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the Class
4 violate California Labor Code sections 201, 202, and 203. Defendants also violated California Labor
5 Code sections 204 and 226(a).

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

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

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

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

24 **SIXTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

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

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

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

- 16 a. Failing to provide legally compliant meal periods to Plaintiff and the Aggrieved
17 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional hour
18 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512.
- 19 b. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take
20 duty-free rest periods, and failing to pay Plaintiff and the Aggrieved Employees an
21 additional hour of premium pay for rest period violations in violation of Labor Code §
22 226.7.
- 23 c. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end of their
24 employment in violation of Labor Code § 203.
- 25 d. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during
26 employment in violation of Labor Code § 204.
- 27 e. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
28 itemized wage statements in violation of Labor Code § 226.

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

5 91. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and
6 on behalf of himself and the Aggrieved Employees and the State of California, requests and is entitled
7 to recover penalties against Defendants for the Labor Code violations described above, including but
8 not limited to penalties under the applicable IWC Wage Order(s), including IWC Wage Order 1-2001,
9 penalties under California Labor Code sections 2699, 558, 210, 226, 226.3 and 1174.5, and any and all
10 additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact
11 amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

12 92. Pursuant to Labor Code § 2699.3, on or about March 14, 2024, Plaintiff, through his
13 counsel of record, gave written notice by online filing with the Labor and Workforce Development
14 Agency (“LWDA”) and by certified mail to the Defendants, of the specific provisions of the Labor Code
15 and IWC Wage Order(s) that Defendants have violated, including the facts and theories to support the
16 violations, and of Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid
17 the filing fee required under Labor Code § 2699.3. To date, the LWDA has not indicated that it intends
18 to investigate the violations discussed in the PAGA notice. Accordingly, Plaintiff has or soon will have
19 fulfilled all administrative prerequisites to the pursuit of his PAGA claim on behalf himself and other
20 Aggrieved Employees pursuant to Labor Code § 2699.3.

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

25 **PRAYER FOR RELIEF**

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

Class Certification

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

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and the Class;
6. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
7. For all actual, consequential, and incidental losses and damages, according to proof;
8. For premium wages pursuant to California Labor Code section 226.7;
9. For pre-judgment interest on any unpaid wages from the date such amounts were due;
10. For reasonable attorneys' fees and costs of suit incurred herein; and
11. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

12. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Order(s) by willfully failing to provide all rest periods to Plaintiff and the Class;
13. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;
14. For all actual, consequential, and incidental losses and damages, according to proof;
15. For premium wages pursuant to California Labor Code section 226.7;
16. For pre-judgment interest on any unpaid wages from the date such amounts were due;
- and
17. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

18. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other Class Members no longer employed by Defendants;

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

20. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and other Class Members who have left Defendants' employ;

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

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

As to the Fourth Cause of Action

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

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

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

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

As to the Fifth Cause of Action

27. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code section 17200, *et seq.* by failing to provide Plaintiff and the Class all meal and rest periods to Plaintiff and the Class, failing to pay Plaintiff's and other Class Members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226.7, 512, 226(a) and 1174(d);

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

29. 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 violation of California Business and Professions Code section 17200, *et seq.*;

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

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

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

As to the Sixth Cause of Action

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

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

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

DATED: July 8, 2024

Respectfully submitted,

NORTH LAW, P.C.

Rafael

Hengameh S. Safaei
Attorneys for Plaintiff ELISEO JUAREZ
ORTIZ, individually and on behalf of
others similarly situated

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DATED: July 8, 2024

NORTH LAW P.C.

Hengameh S. Safaei
Attorneys for Plaintiff ELISEO JUAREZ
ORTIZ, individually and on behalf of
others similarly situated

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is 12100 Wilshire Boulevard, 8th Floor, Los Angeles, California 90025.

On July 9, 2024 I served the following document(s): **PLAINTIFF'S FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT** on the following person(s):

Attorneys for Defendant ENEVER, INC., a California corporation

Ashton Riley
Andrew Weillamn
John Mavros
Adriana Miranda
Stephanie Crisp
Grace Andrade
Fisher & Phillips LLP
2050 Main Street | Suite 1000 | Irvine, CA 92614
ariley@fisherphillips.com
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jmavros@fisherphillips.com
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scrisp@fisherphillips.com
gandrade@fisherphillips.com

The documents were served by the following means:

☒ **BY ELECTRONIC TRANSMISSION.** Based on an agreement of the parties to accept service by electronic transmission, I electronically served the document(s) to the person(s) at the electronic service address(es) listed above.

☐ **BY OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY FAX TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax number(s) listed above. No error was reported by the fax machine that I used.

☐ **BY MESSENGER SERVICE.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in the attached Proof of Service List and providing them to a professional messenger service for service.

☐ **BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in the attached Proof of Service List:

☐ deposited the sealed envelope with the United States Postal Service, with the postage

1 fully prepared.

2 ☐ placed the envelope for collection and mailing, following our ordinary business
3 practices. I am readily familiar with this business's practice for collecting and processing
4 correspondence for mailing. On the same day that correspondence is placed for collection and
mailing, it is deposited in the ordinary course of business with the United States Postal Service,
in a sealed envelope with postage fully prepaid.

5 I am a resident of and employed in the county where the mailing occurred. The envelope or
6 package was placed in the mail at Los Angeles, California.

7 ☐ **BY PERSONAL SERVICE.** I personally delivered the documents to the persons at the
8 addresses listed in the attached Proof of Service List. (1) For a party represented by an attorney,
9 delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's
10 office, in an envelope or package clearly labeled to identify the attorney being served, with a
11 receptionist or an individual in charge of the office; or (c) if there was no person in the office with
whom the notice or papers could be left, by leaving them in a conspicuous place in the office between
the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the
party or by leaving the documents at the party's residence with some person not younger than 18
years of age between the hours of eight in the morning and six in the evening.

12 I declare under penalty of perjury under the laws of the State of California, that to the best of
13 my knowledge that the foregoing is true and correct.

14 Executed on July 9, 2024, at Los Angeles, California.

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18 _____
Hengameh S. Safaei