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ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
06/28/2024

By: Jose Angel De Luna Romero,
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF TULARE**

FERNANDO FERNANDEZ, an
individual,

Plaintiff,

v.

VISALIA CITRUS PACKING GROUP,
INC., a California corporation; UNITED
STAFFING ASSOCIATES, LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: VCU308310

[Assigned for All Purposes to Hon. Brett D.
Hillman, in Dept. 2]

FIRST AMENDED COMPLAINT

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 8);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 8);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 8)**
- 4. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 8);**
- 5. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203);**
- 6. UNLAWFUL AND VOIDABLE AGREEMENT IN VIOLATION OF CALIFORNIA LAW (Cal. Labor Code §925);**

- 1 7. **UNLAWFUL TERMS AND**
2 **CONDITIONS (Cal. Labor Code §432.5);**
3 **8. FAILURE TO ADOPT STANDARDS**
4 **THAT MINIMIZE EXCESSIVE**
5 **INDOOR HEAT (Cal. Labor Code § 6720**
6 **and Wage Order 8);**
7 **9. FAILURE TO ALLOW INSPECTION**
8 **OF EMPLOYMENT RECORDS (Cal.**
9 **Labor Code §1198.5);**
10 **10. UNFAIR COMPETITION (Cal. Bus. &**
11 **Prof. Code §§17200 et seq.); and**
12 **11. PRIVATE ATTORNEY GENERAL ACT**
13 **(PAGA)**

14 **DEMAND FOR A JURY TRIAL**

15 Action Filed: April 23, 2024

16 All allegations in this First Amended Complaint are based upon information and belief
17 except for those allegations which pertain to the Plaintiff named herein and his counsel. Each
18 allegation has evidentiary support or is likely to have evidentiary support after a reasonable
19 opportunity for further investigation and discovery.

20 FERNANDO FERNANDEZ (“Plaintiff”) alleges the following:

21 1. This is a class action brought under California law by an individual who was
22 employed by Visalia Citrus Packing Group, Inc. (“VCPG”) and United Staffing Associates, LLC
23 (“United”) (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this
24 action on behalf of himself and others similarly situated to recover wages from Defendant due to
25 Defendant’s systematic failure to pay overtime wages, failure to pay minimum wages, failure to
26 provide second meal periods (or pay the statutory compensation due), failure to issue accurate
27 wage statements, failure to pay wages due on termination, injunctive relief for violation of Cal.
28 Labor Code section 925, violation of Cal. Labor Code sections 432.5 and 925, failure to adopt
standards that minimize excessive heat and failure to allow inspection of employment records.

1 2. Plaintiffs have worked as employees for Defendants at VCPG's warehouse in
2 Woodlake, California. While working, Plaintiffs have been forced to endure stressful and illegal
3 workplace conditions created by Defendants' efforts to maximize profits and tightly control labor
4 costs.

5 3. Plaintiff, like his co-workers whom Defendants also employed during the
6 applicable limitations period, spent their workdays at Defendant VCPG's warehouse in
7 Woodlake under illegal and highly regimented circumstances. That regimen results from
8 Defendants' insistence to strictly monitor and curtail labor costs, which Defendants accomplish
9 by not paying for all labor costs, failing to pay overtime, failing to pay minimum wages, refusing
10 to provide second meal periods, not paying the required extra hour for missed meal and rest
11 breaks, forcing Plaintiff and Class members to sign waivers of days of rest, failing to adopt
12 standards that minimize excessive heat, failing to allow inspection of employment records, and
13 by using other unlawful stratagems to ensure that labor costs remain artificially low.

14 4. Plaintiff brings this class action to recover, among other things, wages and
15 penalties from unpaid wages earned and due, including but not limited to, premium overtime
16 wages, minimum wages, missed meal break wages, wages due to discharged or quitting
17 employees, penalties for failure to provide accurate itemized wage statements, injunctive relief
18 and damages for failure to afford days of rest in violation of Cal. Lab. Code sections 925 and
19 432.5, failure to adopt standards that minimize excessive heat, failure to allow inspection of
20 employment records and interest, attorneys' fees, costs, and expenses.

21 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
22 himself and all members of the class, to compensate these workers for the unpaid wages and to
23 protect current and future workers of Defendants from being subjected to similar wage theft and
24 otherwise unlawful working conditions.

25 6. Plaintiff also brings an action seeking relief for Defendants' violations of
26 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
27 disgorgement of all compensation retained by Defendants as a result of their unlawful and unfair
28 business practices, as well as injunctive relief.

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8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Tulare and because Defendants owned and operated their businesses in the County of Tulare.

PLAINTIFF

- (a) An individual over age 18 and a resident of Tulare County, California;
- (b) Employed as an hourly employee for Defendants in Woodlake, California;
- (c) Did not receive overtime compensation required by *Labor Code* §§510 and 1194 and the applicable Wage Orders;
- (d) Did not receive minimum wages in violation of *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (e) Did not receive second meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (g) When he was terminated from his employment, did not receive his final paycheck within the time limits prescribed by *Labor Code* §201;
- (h) Was required to execute an unlawful and voidable waiver of days of rest in violation of *Labor Code* §925;

- 1 (i) Was required to execute a waiver that contained unlawful terms and
2 conditions *Labor Code* §432.5;
3 (j) Was exposed to excessive heat; and
4 (k) Was not provided his personnel records. Each of these was a violation of
5 the *Labor Code*.

6 **DEFENDANTS**

7 10. Plaintiff is informed and believes, and based on that information and belief,
8 alleges, Defendant VCPG is, and at all times mentioned herein was:

- 9 (a) A California corporation, with a principal place of business at 100 W.
10 Willow, Suite 409, Visalia, California 93219. Defendant has been
11 authorized to do business and has been doing business in the County of
12 Tulare;
13 (b) The former employer of Plaintiff and the current and former employer of
14 the putative Class members;
15 (c) Paid Plaintiff and all Class Members on an hourly basis;
16 (d) Failed to pay Plaintiff and all putative Class members premium overtime
17 wages;
18 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
19 (f) Failed to provide Plaintiff and all putative Class members with second
20 meal periods, failed to provide Plaintiff and all putative Class members
21 with accurate itemized wage statements and failed to issue final paychecks
22 timely to Plaintiff and all putative Class members;
23 (g) Required Plaintiff and all putative Class members to execute an unlawful
24 and voidable waiver of days of rest *Labor Code* §925;
25 (l) Required Plaintiff and putative Class members to execute a waiver that
26 contained unlawful terms and conditions *Labor Code* §432.5;
27 (h) Failed to minimize excessive heat standards; and
28

(i) Was not provided his personnel records. Each of these was a violation of the *Labor Code*.

11. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant United is, and at all times mentioned herein was:

(a) A California limited liability company with a principal place of business at 505 Higuera St., San Luis Obispo, California 93401. Defendant has been authorized to do business and has been doing business in the County of Tulare;

(b) The former employer of Plaintiff and the current and former employer of the putative Class members;

(c) Paid Plaintiff and all Class Members on an hourly basis;

(d) Failed to pay Plaintiff and all putative Class members premium overtime wages;

(e) Failed to pay Plaintiff and all putative Class members minimum wages;

(f) Failed to provide Plaintiff and all putative Class members with second meal periods, failed to provide Plaintiff and all putative Class members with accurate itemized wage statements and failed to issue final paychecks timely to Plaintiff and all putative Class members;

(j) Required Plaintiff and all putative Class members to execute an unlawful and voidable waiver of days of rest *Labor Code* §925;

(m) Required Plaintiff and putative Class members to execute a waiver that contained unlawful terms and conditions *Labor Code* §432.5;

(g) Failed to minimize excessive heat standards; and

(h) Was not provided his personnel records. Each of these was a violation of the *Labor Code*.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*

Civil Procedure § 474. Plaintiff will seek leave to amend his Complaint to allege the true names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

13. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or are authorized to do, or are otherwise doing, business in the State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business in the County of Tulare. Each of the Defendants DOES 1 through 100 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or representative of one or more of the other Defendants named herein, and acting with permission, authorization, and/or ratification and consent of the other Defendants.

14. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

15. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants and that each Defendant was acting within the course and scope of his, hers or its authority as the agent, servant and/or employee of each of the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

16. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this First Amended Complaint, including DOES 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and

Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendants, and each of them, represented a unified body so that the actions of one Defendant was accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

JOINT EMPLOYER ALLEGATIONS

17. Plaintiff is informed and believes, and based on that information and belief, alleges that:

- (a) VCPG and United are parties to a written agreement pursuant to which United supplies hourly employees to VCPG;
- (b) Prospective employees submit employment applications to United, and United determines if the applicants are suitable for referral to VCPG by means of, among other things, a background investigation;
- (c) If United determines the applicant is acceptable, it refers him or her to VCPG;
- (d) If the applicant is accepted for employment by VCPG, United pays those employees for hours worked at VCPG by the issuance of United paychecks drawn on United payroll accounts, and United makes the appropriate payroll deductions and employer-mandated payments, such as Social Security, federal and local taxes, and payroll taxes;
- (e) United provides workers' compensation insurance coverage for those employees it sends to VCPG;
- (f) United reserves the right to withdraw any person from consideration for and/or employment by VCPG, and United represents to VCPG that those persons it refers to VCPG will be considered United's employees for all purposes;
- (g) Once the United referred employees begin work at VCPG, VCPG exclusively establishes the wages they will be paid, their hours of employment, such as shift assignments, and all other terms and conditions

1 of employment, such as job assignments, none of which is subject to
2 negotiation. These employees are supervised by United and VCPG
3 management and must adhere to said management's directions. They are
4 subject to United and VCPG's joint rules, regulations and other
5 employment policies and must perform their duties and conform their
6 behavior to said rules, policies and directions. Further, VCPG instituted
7 and enforced policies and procedures relating to Plaintiff's work,
8 including, but not limited to, meal breaks and/or the lack thereof. United
9 and VCPG have the right and discretion to discipline the United referred
10 employees, up to and including discharge, for their failure to conform to
11 any direction of United and VCPG management or any of United and
12 VCPG's employment-related or other policies.

13 (h) Plaintiff and members of the Class physically work and report to work on
14 VCPG's premises.

15 18. Plaintiff is informed and believes and thereon alleges that United directly
16 employed, or on VCPG's behalf, exercised control over Plaintiff's wages, hours and/or working
17 conditions (start time, end time, what to unload, etc.) such that United was a joint employer with
18 VCPG.

19 **CLASS ALLEGATIONS**

20 **A. The Definition of the Class**

21 19. The Class ("the Class") is defined as follows:

22 (a) "All current and former employees who were hourly paid employees of
23 Defendants and worked for VCPG and United in California at any time during the
24 period commencing on the date that is four (4) years prior to the filing of this
25 Complaint and continuing through the present date (the "Class Period")."

26 (b) "All persons who were hourly paid employees of Defendants and worked for
27 VCPG and United in California and left the employ of Defendants at any time
28 during the period commencing on the date that is within one (1) year prior to the

filing of this Complaint and continuing through the present date (the “Class Period”).”

Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

B. Maintenance of the Action

20. Plaintiff brings this action individually and on behalf of himself and as representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and 17204 and *Code of Civil Procedure* § 382.

C. The Class Requisites

21. At all material times, Plaintiff was a member of the Class.

22. The Class action meets the statutory prerequisites for maintaining a class action under Code of Civil Procedure § 382 in that:

- (a) The persons who comprise the Class are so numerous that the joinder of all those persons is impracticable and the disposition of their claims as a Class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this First Amended Complaint are common to the Class and will apply uniformly to every Class member;
- (c) The claims of the representative Plaintiff are typical of the claims of each Class member. Plaintiff, like all Class members, has sustained damages arising from Defendants’ violations of the laws of the State of California. Plaintiff, and the Class members, were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by the Defendants;
- (d) The representative Plaintiff has, and will continue to, fairly and adequately represent and protect the interests of the Class and has retained counsel who is competent and experienced in class action litigation.

1 There are no material conflicts between the claims of the representative
2 Plaintiff and the Class members that would make class certification
3 inappropriate. Counsel for the Class will vigorously assert the claims of all
4 Class members.

5 23. The persons who comprise the Class are so numerous that joining all of them is
6 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
7 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
8 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
9 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for Plaintiff
10 are experienced, qualified and generally able to conduct complex class action litigation.

11 24. The Court should permit the action to be maintained as a class action under *Code*
12 *of Civil Procedure* § 382 because:

- 13 (a) The questions of law and fact common to the Class predominate over any
14 question affecting only individual members;
- 15 (b) A class action is superior to any other available method for fairly and
16 efficiently adjudicating the claims of the Class;
- 17 (c) The Class members are so numerous that it is impractical to bring all of
18 them before the Court;
- 19 (d) Plaintiff and other Class members will not be able to obtain effective and
20 economic legal redress unless the action is maintained as a class action;
- 21 (e) There is a community of interest in obtaining appropriate legal and
22 equitable relief for the statutory violations, and in obtaining adequate
23 compensation for the damages and injuries for which Defendants are
24 responsible in an amount sufficient to adequately compensate the Class
25 members;
- 26 (f) Without Class certification, the prosecution of separate actions by
27 individual Class members would create a risk of:
28

1 31. While employed by Defendants as a Palletizer, Plaintiff was paid approximately
2 \$15.50 per hour.

3 32. The employment by Defendants of the Class Members, and each of them, is
4 governed by Industrial Welfare Commission Wage Order 8, which covers those persons
5 employed in industries handling products after harvest.

6 **FAILURE TO PAY OVERTIME/WAGES**

7 33. Under California law, non-exempt employees, as defined by Wage Order 8, are
8 entitled to premium wages for overtime worked. Under California law, an hourly paid employee
9 is entitled to overtime pay when they exceed eight hours of work in a single day, exceed 40 hours
10 of work in a week or work seven days in a row.

11 34. Under California law, non-exempt employees, as defined by the applicable Wage
12 Order, are entitled to minimum wages. Labor Code Section 1197 states the California requirement
13 that employees must be paid at least the minimum wage fixed by the Commission or by any
14 applicable state or local law, and any payment of less than the minimum wage is unlawful.
15 Similarly, Labor Code Section 1194 entitles “any employee receiving less than the legal
16 minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of
17 this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage Order No. 8-
18 2001, obligates employers to pay each employee minimum wages for all hours worked.

19 35. These minimum wage standards apply to each hour employees worked or were
20 subject to control by the employer for which they were not paid. Therefore, an employer’s failure
21 to pay for any particular hour of time worked by an employee or subject to the employer’s control
22 is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results
23 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
24 314, 324 (2005).

25 36. About two times per week, Plaintiff and members of the Class had to wait between
26 1 to 2 minutes to clock in for their shifts and/or the end of their meal breaks because the time
27 clocks were not available. Defendants did not record the time Plaintiff and Class members spent
28 waiting in line to clock in and did not pay any wages for such time.

1 37. Plaintiff and Class members were required to wear protective gear such as gloves,
2 hair/beard nets and masks and were required to put their protective gear on at work. Plaintiff and
3 Class members had to wait in line to receive the protective gear, then put it on and, after that
4 clock in. This process took approximately 1-2 minutes off the clock. Thus, Plaintiff and Class
5 members must perform mandatory work activities of donning and doffing their protective gear
6 before they clock in. Further, doffing the protective gear after clocking out took approximately
7 1-2 seconds. The time waiting in line and then donning and doffing the protective gear was not
8 recorded by Defendants. As a result, Class members were required to don and doff their protective
9 gear, without compensation. Class members are entitled to overtime pay for any time spent
10 donning and doffing off the clock.

11 38. Plaintiff and the Class were not paid overtime and minimum wages due to off-the-
12 clock work and Defendants' failure to afford second meal periods on days when Plaintiff and
13 Class members worked more than 10 hours.

14 39. At all times during the relevant time period, Plaintiff and the Class routinely
15 worked schedules such that they were due pay at overtime and minimum wage rates. During this
16 period, it was the practice and policy of Defendants to not pay employees overtime and minimum
17 wages. Monies for unpaid overtime and minimum wages remain due and owing.

18 **FAILURE TO AFFORD SECOND MEAL BREAKS**

19 40. Under California law, non-exempt employees as defined by Wage Order 8, are
20 entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
21 worked. Non-exempt employees are entitled to one hour of pay at their regular pay rate for each
22 day the requisite meal periods are not provided.

23 41. Plaintiff and Class Members were at times not afforded second meal breaks on
24 days when they worked between 10-12 hours.

25 42. Defendants' policies and procedures were applied to all non-exempt employees in
26 California and resulted in non-exempt employees working time which was not compensated by
27 any wages in violation of Labor Code sections 510, 1194 and the applicable Wage Orders. As a
28 result, Defendants owe wages at the legal overtime rate for unpaid overtime to each of their

California non-exempt employees whose daily hours were reduced even though their meal periods were never afforded.

FAILURE TO ISSUE ACCURATE WAGE STATEMENTS

43. As a result of Defendants' failure to pay employees at required overtime rates, minimum wages and premium pay for missed second meal breaks, the wage statements issued to the employees did not comply with *Labor Code* §226 and California Industrial Welfare Commission ("IWC") Wage Order 8 in that they did not accurately reflect all wages earned and due and owing.

FAILURE TO PAY WAGES ON TERMINATION

44. As a further result of Defendants' failure to pay employees at required overtime rates and minimum wages and premium pay for missed meal breaks, when the employees left their employ, they were not timely paid all wages due them, as required by *Labor Code* §§ 201, 202 and Wage Order 8. Further, it was the practice of Defendants to not pay employees the final paychecks within the time periods mandated by *Labor Code* §§201, 202 and Wage Order 8.

UNLAWFUL AND VOIDABLE AGREEMENT IN VIOLATION OF LABOR CODE SECTION 925

45. Defendants unlawfully required Plaintiff and Class members to execute an unlawful waiver: Voluntary 7-Day Work Week Acknowledgment – Waiver of One Day of Rest in 7 Days" as a condition of employment, in violation of Cal. Lab. Code section 925.

UNLAWFUL TERMS AND CONDITIONS IN VIOLATION OF LABOR CODE SECTION 432.5

46. Defendants unlawfully required Plaintiff and Class members to execute an unlawful waiver: Voluntary 7-Day Work Week Acknowledgment – Waiver of One Day of Rest in 7 Days" as a condition of employment, in violation of Cal. Lab. Code section 432.5.

FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR HEAT

47. Labor Code section 1198 requires an employer to comply with the standard conditions of labor for California employees as set forth by the IWC, Section 15 of Wage Order 8, which states:

1 (A) The temperature maintained in each work area shall provide reasonable comfort
2 consistent with industry-wide standards for the nature of the process and the work
3 performed.

4 (B) If excessive heat or humidity is created by the work process, the employer shall take
5 all feasible means to reduce such excessive heat or humidity to a degree providing
6 reasonable comfort.

7 48. In violation of Labor Code section 6720, Defendants failed to provide Plaintiff
8 and other current and former hourly non-exempt employees employed by Defendant who worked
9 at Defendant VCPG's warehouse in California with reasonable comfort by maintaining the indoor
10 temperature within the range of industry standards by, *inter alia*, providing adequate air
11 conditioning or ventilation, in violation of Labor Code section 1198 and section 15 of Wage
12 Order. Defendant VCPG's warehouse did not have proper ventilation and/or air conditioning.
13 The temperature inside the warehouse was extremely hot for the workers.

14 49. Defendants' violations of Wage Order 8 constituted violations of Labor Code
15 section 1198, which prohibits employment under conditions of labor that violate the Wage
16 Orders.

17 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

18 50. Defendants failed to allow Plaintiff and Class members to timely inspect their
19 records and payroll files.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME**

22 **(Labor Code §§510, 558, 1194.3 and Wage Order 8 By Plaintiffs Against All Defendants**
23 **and Does 1-100)**

24 51. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this First Amended Complaint.

26 52. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab. Code
27 §§510, 1194, and 1198, and IWC Wage Order No. 8, Defendants were required to compensate
28 Plaintiff with premium pay for all overtime work performed, for hours worked in excess of eight

(8) hours per day and/or forty (40) hours per week and for the first eight (8) hours on the seventh (7th) consecutive day of any work week.

53. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee who had not been paid overtime compensation could recover the unpaid balance of the full amount of overtime wages due, including interest thereon, together with reasonable attorneys' fees and costs of suit.

54. Pursuant to IWC Wage Order No. 8-2001, § 3, "Employment beyond eight (8) hours in any workday is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday...

55. California Labor Code section 558 provides in pertinent part:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee...

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

56. About two times per week, Plaintiff and members of the Class had to wait between 1 to 2 minutes to clock in for their shifts and/or the end of their meal breaks because the time clocks were not available. Defendants did not record the time Plaintiff and Class members spent waiting in line to clock in and did not pay any wages for such time.

1 57. Defendants required Plaintiff and the Class to regularly wear protective gear such
2 as gloves, hair/beard nets and masks and were required to put their protective gear on at work.
3 Plaintiff and Class members had to wait in line to receive the protective gear, then put it on and
4 thereafter clock in. This process took approximately 1-2 minutes off the clock. Thus, Plaintiff
5 and Class members must perform mandatory work activities of donning and doffing their
6 protective gear before they clock in. Further, doffing the protective gear after clocking out took
7 approximately 1-2 seconds. The time waiting in line and then donning and doffing the protective
8 gear was not recorded by Defendants. As a result, Class members were required to don and doff
9 their protective gear, without compensation. Class members are entitled to overtime pay for any
10 time spent donning and doffing off the clock.

11 58. The amount of time spent by Class members donning and doffing uniforms was
12 not *de minimis*.

13 59. The foregoing overtime compensation is owed and unpaid. As a direct and
14 proximate result of Defendants' failure and refusal to pay overtime, Plaintiff and Class Members
15 suffered damages in an amount to be proven at trial.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES DUE TO TIME ROUNDING**

18 **(IWC Wage Order No. 8; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
19 **Against All Defendants and Does 1 through 100)**

20 60. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
21 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
22 attorneys' fees, costs and interest.

23 61. Plaintiff and the Class reallege and incorporate by reference all of the allegations
24 set forth in this First Amended Complaint.

25 62. Labor Code §§ 1194(a) states: "Notwithstanding any agreement to work for a
26 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
27 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
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1 of the full amount of this minimum wage or overtime compensation, including interest thereon,
2 reasonable attorney's fees, and costs of suit.”

3 63. *Labor Code* § 1197 states the California requirement that employees must be paid
4 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
5 wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the
6 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
7 of this minimum wage.” IWC Wage Order 1-2001 also obligates employers to pay each
8 employee minimum wages for all hours worked. These minimum wage standards apply to each
9 hour employees worked for which they were not paid. Therefore, an employer’s failure to pay
10 for any particular hour of time worked by an employee is unlawful, even if averaging an
11 employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
12 minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

13 64. Pursuant to Wage Order 8, Defendants are required to pay the members of the
14 Class for all hours worked, meaning the time during which an employee is subject to the control
15 of an employer, including all the time the employee is suffered or permitted to work, whether or
16 not required to do so.

17 65. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work and
18 the standard conditions of labor fixed by the commission shall be the maximum hours of work
19 and the standard conditions of labor for employees. The employment of any employee for longer
20 hours than those fixed by the order or under conditions of labor prohibited by the order is
21 unlawful.”

22 66. Defendants failed to satisfy minimum wage requirements because they improperly
23 required Plaintiff and Class members to engage in activities off the clock in violation of *Labor*
24 *Code* §§ 1197, 1198 and Wage Order 8. Further, Defendants failed to afford second meal breaks
25 on days when Plaintiff and Class members worked between 10-12 hours.

26 67. Defendants’ pattern, practice, and uniform administration of corporate policy
27 regarding illegal employee compensation as described herein is unlawful and creates an
28 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the Class,

1 in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
2 appropriate rate.

3 68. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
4 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
5 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for
6 all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the
7 time associated with the overtime for which they received no compensation. *See Sillah v.*
8 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
9 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
10 they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp.
11 3d 1115, 1132-33 (N.D. Cal. 2016).

12 69. Plaintiff and the other Class Members suffered and continue to suffer losses
13 related to the use and enjoyment of compensation due and owing to them as a direct result of
14 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to
15 proof at trial and within the jurisdictional limitations of this Court.

16 70. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
17 Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them,
18 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

19 **THIRD CAUSE OF ACTION**

20 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

21 **(IWC Wage Order No. 8; Labor Code §§ 226.7, 512 By Plaintiffs Against All Defendants**
22 **and Does 1 through 100)**

23 71. Plaintiff and the Class reallege and incorporate by reference all of the allegations
24 set forth in this First Amended Complaint.

25 72. California Labor Code §226.7(a) prohibits an employer from requiring an
26 employee to work during any meal period mandated by an applicable Industrial Wage Order.
27 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
28 employee to work during a meal or rest break or recovery period mandated pursuant to an

1 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
2 Commission..."

3 73. California Labor Code §1198 makes unlawful the employment of an employee
4 under conditions the IWC prohibits.

5 74. IWC Order No. 8-2001(11)(A) provides, in relevant part: "No employer shall
6 employ any person for a work period of more than five (5) hours without a meal period of not
7 less than 30-minutes, except that when a work period of not more than six (6) hours will complete
8 the day's work the meal period may be waived by mutual consent of the employer and the
9 employee."

10 75. IWC Order No. 8-2001 (11)(c) further provides, in relevant part: "Unless the
11 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
12 considered an 'on duty' meal period and counted as time worked."

13 76. Section 512(a) of the California Labor Code provides, in relevant part, that:

14 An employer may not employ an employee for a work period of more than five
15 hours per day without providing the employee with a meal period of not less than
16 30-minutes, except that if the total work period per day of the employee is no
17 more than six hours, the meal period may be waived by mutual consent of both
18 the employer and employee. An employer may not employ an employee for a
19 work period of more than 10 hours per day without providing the employee with
20 a second meal period of not less than 30-minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal period
was not waived.

21 77. The Labor Code and Wage Order provisions cited above require California
22 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
23 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
24 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2) ensure
25 that employees are actually free of job duties for thirty minutes per day on or before the fifth hour
26 of their shifts.

1 78. As alleged herein, Defendants failed to relieve employees of duties for timely
2 second meal breaks throughout the Class Period; Plaintiff and members of the Class were not
3 afforded second 30-minute meal breaks on days when they worked between 10-12 hours.

4 79. Under California law, employers must also record their employees' meal periods:
5 "Every employer shall keep accurate information with respect to each employee, including the
6 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
7 ... need not be recorded." IWC Order No. 8, § (7)(A)(3). Where the employer has failed to keep
8 records required by statute, the consequences of such failure should fall on the employer, not the
9 employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis
10 for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendants
11 had an obligation under the record-keeping requirements of the Wage Order to track meal periods
12 unless "all work ceases," Defendants knew or should have known its employees were regularly
13 missing meal periods during the Class Period.

14 80. Defendants have a policy or practice of failing to ensure that Plaintiff and
15 members of the class take the meal periods required by California Labor Code §226.7 and IWC
16 Wage Order No. 8-2001 §11.

17 81. By their actions in not affording Plaintiff and Class members second meal periods,
18 Defendants violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount
19 of one additional hour of pay at the employee's regular rate of compensation for each work period
20 during each day in which Defendants failed to provide employees with statutory timely off-duty
21 second meal periods.

22 82. Defendants also have a policy or practice of failing to pay each of their employees
23 who was not provided with a second meal period as required an additional one hour of
24 compensation at each employee's regular rate of pay.

25 83. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring
26 a private right of action to recover wages due based on the deprivation of timely meal periods
27 under Cal. Labor Code § 226.7(b).
28

84. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendants' violations of the California Labor Code and the applicable IWC Wage Orders.

FOURTH CAUSE OF ACTION

FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE

ITEMIZED STATEMENTS

(Labor Code §226 By Plaintiffs Against All Defendants and Does 1 through 100)

85. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

86. Pursuant to the applicable IWC Wage Orders, Defendants were the employers of Plaintiff and the Class.

87. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 8-2001 section 7, Defendants are required to maintain and provide accurate records relating to employee compensation, including all formulas and production records used to calculate wages due.

88. Defendants are further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

89. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

90. Notwithstanding these provisions. Defendants have engaged in a uniform practice of refusing to maintain and provide the accurate records and wage statements required by California law.

91. Throughout the Class Period, Defendants intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in that the payments owed to Plaintiff and the members of the Class for overtime compensation, minimum wages and missed second meal periods, were not included in gross wages earned by Plaintiff and members of the Class.

92. As a result, Plaintiff and members of the Class have been injured by having been deprived of the true facts pertaining to their compensation and employment.

93. Plaintiff and members of the Class were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to overtime compensation, minimum wages and pay for second meal periods not provided, even though they were so entitled and these failures hindered them from determining the amounts of wages owed to them.

94. Plaintiff and members of the Class are entitled to the amounts provided in Labor Code §226(e), plus attorneys' fees and costs.

95. As a result, Plaintiff seeks recovery of the penalties authorized by Labor Code sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided by law for Defendants' improper conduct.

FIFTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION

(Labor Code §§201-203 By Plaintiffs Against All Defendants and Does 1 through 100)

96. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

1 97. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due
2 and payable immediately. Labor Code § 202(a) provides that when an employee resigns from
3 employment, unpaid wages are due and payable within 72 hours of resignation.

4 98. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
5 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
6 paid, not to exceed thirty days.

7 99. Plaintiff and the Class were discharged and/or resigned from Defendants' employ,
8 and Defendants willfully failed to pay Plaintiff and the Class wages due them.

9 100. Plaintiff's last paycheck was not complete, and he is still owed unpaid break
10 premiums, overtime and other wages.

11 101. Further, Defendants failed to pay Plaintiff on his termination date and instead
12 improperly paid him on the regularly scheduled payday, three days after his termination. Plaintiff
13 was not provided any waiting time pay.

14 102. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages
15 for each day he or she was not timely paid, not to exceed 30 days' wages.

16 **SIXTH CAUSE OF ACTION**

17 **UNLAWFUL AND VOIDABLE AGREEMENT**

18 **(Cal. Labor Code §925 By Plaintiffs Against All Defendants and Does 1 through 100)**

19 103. Plaintiff and the Class reallege and incorporate by reference all of the allegations
20 set forth in this First Amended Complaint.

21 104. California Labor Code section 925(a) provides that a California employee shall
22 not be required to agree to a provision that would deprive the employee of the substantive
23 protection of California law. Section 925(b) provides that any provision of a contract that violates
24 subdivision (a) is voidable by the employee.

25 105. Upon information and belief, Defendants required Plaintiff and Class members,
26 as a condition of employment, to execute a "Voluntary 7-Day Work Week Acknowledgment –
27 Waiver of One Day of Rest in 7 Days". On or about April 18, 2023, Plaintiff electronically
28 executed that waiver.

1 106. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff and
2 Class members were deprived of the protection of California law, in violation of Labor Code
3 section 925(a).

4 107. Defendants’ conduct in subjecting Plaintiff and Class members to signing an
5 unlawful waiver is a clear violation of Labor Code section 925.

6 108. Pursuant to Labor Code section 925(c), Plaintiff seeks an injunction enjoining
7 such conduct by Defendants in the future, an order requiring all Defendants to notify all members
8 of the Class that all the waivers previously executed by Class members are null and void and
9 restitution to Plaintiff and all Class members and attorneys’ fees and costs.

10 **SEVENTH CAUSE OF ACTION**

11 **UNLAWFUL TERMS AND CONDITIONS**

12 **(Cal. Labor Code §432.5 By Plaintiffs Against All Defendants and Does 1 through 100)**

13 109. Plaintiff and the Class reallege and incorporate by reference all of the allegations
14 set forth in this First Amended Complaint.

15 110. Labor Code § 432.5 states, “No employer, or agent, manager, superintendent, or
16 officer thereof, shall require any employee or applicant for employment to agree, in writing, to
17 any term or condition which is known by such employer, or agent, manager, superintendent, or
18 officer thereof to be prohibited by law.” The intent and purpose of this statute is clear - no
19 employee shall be required to agree to unlawful terms in their employment contract.

20 111. Here, Defendants required Plaintiff and Class members, as a condition of
21 employment, to execute a “Voluntary 7-Day Work Week Acknowledgment – Waiver of One Day
22 of Rest in 7 Days”. On or about April 18, 2023, Plaintiff electronically executed that waiver.

23 112. Defendants required Plaintiff and Class members to agree, in writing, as a
24 condition of employment, to terms and/or conditions which they knew were prohibited by
25 California law.

26 113. As a direct and proximate result of Defendants’ violations alleged herein, Plaintiff
27 and members of the Class have suffered and continue to suffer, substantial losses as a result of
28 the terms and conditions prohibited by law which they were required by Defendants to be agreed

1 to, including the use and enjoyment of monies lost as a result of the unlawful terms and
2 conditions, lost interest, expenses and attorneys' fees and costs, all within the jurisdictional
3 amounts of this Court, according to proof.

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR HEAT**

6 ***(Labor Code § 6720, Wage Order No. 8 By Plaintiffs against Defendant VCPG and Does 1***
7 ***through 100)***

8 114. Plaintiff and Class members seek to recover all available remedies, including, but
9 not limited to, the monies owed from Defendants' violations, interest thereon, reasonable
10 attorneys' fees and costs of suit, pursuant to the Labor Code and CCP section 1021.5.

11 115. Plaintiff and the Class reallege and incorporate by reference all of the allegations
12 set forth in this First Amended Complaint.

13 116. California *Labor Code* § 6720 sets forth requirements for adapting a standard that
14 minimizes heat-related illness and injury among workers working in indoor places. The provision
15 states the following: "[t]he standard shall be based on environmental temperatures, work activity
16 levels, and other factors."

17 117. Wage Order 8 section 15(A) provides the following: "The temperature maintained
18 in each work area shall provide reasonable comfort consistent with industry-wide standards for
19 the nature of the process and the work performed." Section 15(B) states, "[i]f excessive heat or
20 humidity is created by the work process, the employer shall take all feasible means to reduce such
21 excessive heat or humidity to a degree providing reasonable comfort."

22 118. Defendant VCPG failed to comply with *California Labor Code* §§ 6720 and Wage
23 Order 8 by maintaining an excessively hot working environment. Defendant's warehouse did not
24 have proper ventilation and/or air conditioning, and the temperature inside the warehouse was
25 excessively hot.

26 119. Defendant VCPG failed to adopt standards to reduce heat-related illnesses, and as
27 a result, Defendant VCPG has failed to maintain a safe indoor working environment.

28 ///

120. Plaintiff and Class Members request recovery and penalties according to proof, as well as interest, attorneys' fees and costs pursuant to the California Labor Code.

NINTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Labor Code §1198.5 By Plaintiffs Against All Defendants and Does 1 through 100)

121. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

122. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records,..... later than 30 calendar days from the date the employer receives the request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified I this section... the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(l) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section and may recover costs and reasonable attorney's fees in such an action.

123. Additionally, pursuant to Wage Order 8, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

124. On or about September 20, 2023, Plaintiff's former counsel issued a written request to Defendants for copies of his personnel records. Defendants failed to produce the employee handbook and additional documents contained in Plaintiff's personnel file. Further, Plaintiff's former counsel made several follow-ups attempts to no avail.

125. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of his records.

126. As a direct result and consequence of Defendants' failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendant's violation of §1198.

TENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against All Defendants and Does 1 through 100)

127. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

128. Pursuant to applicable IWC Wage Orders, Defendants were the employer of Plaintiff and the Class. Defendants are also "person[(s)]" as that term is defined in Business & Professions Code §17021.

129. The Business & Professions Code defines unfair competition as any unlawful, unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay Plaintiff and the Class overtime compensation; (2) pay minimum wages; (3) pay Plaintiff and the Class second meal periods not provided, (4) furnish Plaintiff and the Class with accurate itemized

wage statements, as mandated by the applicable Labor Code and Industrial Welfare Commission requirements, (5) pay Plaintiff and the Class wages due when leaving their employ, (7) comply with California law by requiring execution of waivers of days of rest, (9) adopt standards that minimize excessive heat, (9) provide personnel records, all in violation of Business & Professions Code §§ 17200 *et seq.*

130. By and through the unfair and unlawful business practices described herein, Defendants have obtained valuable property, money and services from the Plaintiff and the Class and have deprived them of valuable rights and benefits guaranteed by law all to the detriment of Plaintiff and the Class.

131. All the acts described herein are violations of, among other things, the Labor Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of public policy; and in addition, are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

132. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which Defendants have acquired, or of which Plaintiff and the Class have been deprived by means of the above-described unfair and unlawful business practices.

133. Plaintiff and the Class are further entitled to, and do, seek a declaration that the above-described business practices are unfair and unlawful and that injunctive relief should be issued restraining Defendants from engaging in any of the above described unfair and unlawful business practices in the future.

134. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of the unfair and unlawful business practices of Defendants. As a result of the unfair and unlawful business practices described above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendants are restrained from continuing to engage in these unfair and unlawful business practices.

1 135. In addition, Defendants should be required to disgorge the unpaid moneys to
2 Plaintiff and the Class.

3 **ELEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against All Defendants and**
6 **Does 1 through 100)**

7 136. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this First Amended Complaint.

9 137. Plaintiff brings this action on his own behalf and on behalf of all current and
10 former employees of Defendants who were employed in California for the previous four years
11 seeking to recover unpaid wages, including but not limited to unpaid overtime, meal period
12 violations, and rest periods violations as set forth in this pleading.

13 138. On April 23, 2024, Plaintiff, pursuant to California Labor Code §§2699, *et seq.*,
14 by and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the
15 State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via
16 Certified Mail Return Receipt Requested to the defendant.

17 139. More than 65 days have passed since the above letter, and Plaintiff’s counsel has
18 not received any notice from the LWDA stating an intention to prosecute Plaintiff’s PAGA
19 claims.

20 140. Plaintiff has, therefore complied with the administrative exhaustion requirements
21 of PAGA.

22 141. Plaintiff seeks Labor Code penalties, attorney’s fees, and costs, in an amount
23 according to proof at trial, as provided by the Labor Code Private Attorney General Act.

24 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
25 and against Defendants, and each of them, as follows:

26 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and
27 Class Members, according to proof;

2. For compensatory damages in the amount minimum wages due to Plaintiff and Class Members, according to proof;
3. For payment of unpaid wages in accordance with California labor and employment law;
4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal period was not provided;
5. For an award of consequential damages in Plaintiff and Class Members' favor and against Defendants, in an amount to be proven at trial;
6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
7. For payment to Plaintiff and Class Members of waiting time penalties pursuant to *Cal. Lab. Code* §203, in an amount equal to his respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
8. For specific relief, enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
9. For prejudgment interest accrued on all due and unpaid overtime and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;
10. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5, according to proof;
11. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 8-2001(14);
12. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 925 and/or *Cal. Code of Civ. Proc.* §1021.5;
13. For an award of restitution of wages to Plaintiff and Class members in an amount equal to the amount of wages owed and unpaid, according to proof;

14. A declaratory judgment that Defendants have knowingly and intentionally violated the following provision of law: Labor Code section 6720, for failing to adopt standards that minimize excessive indoor heat;

15. For injunctive relief requiring Defendants to comply with Labor Code 1198.5(b)(1);

16. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to Cal. Labor Code §2699(g);

17. For issuance of a permanent injunction enjoining Defendants, and each of them, from continuing to engage in the unlawful conduct alleged herein, including, but not limited to, all violations of Labor Code section 925;

18. Damages due to Defendants' violation of Labor Code section 432.5;

19. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;

20. For other injunctive relief ordering Defendants to notify Plaintiff and Class Members that they have not been paid the proper amounts in accordance with California law;

21. For punitive and exemplary damages in a sum to be determined at trial; and

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

DEMAND FOR JURY TRIAL

Plaintiff Fernando Fernandez hereby respectfully requests a trial by jury for all claims and issues raised in his First Amended Complaint that may be entitled to a jury trial.

Date: June 28, 2024

By: Jasmine J. Badawi
Attorneys for Plaintiff,
FERNANDO FERNANDEZ