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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
08/05/2024
By: I. Romo Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

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

Plaintiff,

vs.

PRODUCE EXPRESS, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 24CV008285

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

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

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

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

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

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

11 **THE PARTIES**

12 4. Plaintiff Juan Solorzano is a resident of Sacramento, in Sacramento County,
13 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
14 approximately November 1999 to December 2023. Plaintiff worked for Defendants as a
15 Warehouse Worker at their facility in Sacramento, California. During his employment,
16 Plaintiff typically worked ten (10) hours or more per day and six (6) days or more per week.
17 Plaintiff's primary job duties included, without limitation, loading and unloading vehicles,
18 conducting inventory, drafting inventory reports, and operating forklifts and pallet jacks.

19 5. PRODUCE EXPRESS, INC. was and is, upon information and belief, a
20 California corporation, and at all times hereinafter mentioned, an employer whose employees
21 are engaged throughout this county and the State of California.

22 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
23 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
24 amend the complaint and serve such fictitiously named Defendants once their names and
25 capacities become known.

26 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
27 were the partners, agents, owners, or managers of PRODUCE EXPRESS, INC. at all relevant
28 times.

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

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

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

GENERAL ALLEGATIONS

11. Defendants are wholesale distributors of fresh fruits and vegetables in the greater Sacramento Valley, with at least two (2) locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Sacramento, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon

1 information and belief, Defendants set forth uniform policies and procedures in several
2 documents provided at an employee's time of hire.

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

11 14. Defendants continue to employ non-exempt or hourly paid employees in
12 California.

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

17 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
18 members were not paid for all hours worked because all hours worked were not recorded.

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

23 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to be paid at a regular rate
25 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
26 premiums, that included as eligible income all remuneration required by law, including but not
27 limited to, all income derived from incentive pay, fringe pay, nondiscretionary bonuses,
28 and/or other forms of compensation, but failed to include all forms of remuneration in

1 calculating the regular rate of pay for Plaintiff and class members.

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

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

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

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

28 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
3 knowingly, and intentionally failed to do so.

4 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to timely payment of all
6 wages earned upon termination of employment. In violation of the California Labor Code,
7 Plaintiff and class members did not receive payment of all wages due, including, but not
8 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick
9 leave pay, within permissible time periods.

10 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to timely payment of wages
12 during their employment. In violation of the California Labor Code, Plaintiff and class
13 members did not receive payment of all wages, including, but not limited to, overtime wages,
14 minimum wages, meal and rest period premiums, and/or sick leave pay, within permissible
15 time periods.

16 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive full
18 reimbursement for all business-related expenses and costs they incurred during the course and
19 scope of their employment and that they did not receive full reimbursement of applicable
20 business-related expenses and costs incurred.

21 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive sick leave
23 benefits to be paid at a regular rate of pay, that included as eligible income all remuneration
24 required by law, including but not limited to, all income derived from incentive pay, fringe
25 pay, nondiscretionary bonuses, and/or other forms of compensation and to receive itemized
26 wage statements or separate written statements showing the amount of paid sick leave. In
27 violation of the California Labor Code, Defendants failed to include all forms of remuneration
28 in calculating the regular rate of pay for sick leave pay and failed to provide Plaintiff and class

1 members with written itemized wage statements showing this information.

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

8 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

19 31. Plaintiff and other current and former employees of Defendants are "aggrieved
20 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
21 or former employees and one or more of the alleged violations were committed against them.

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

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

violation.

- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or

1 representative and by online filing with the LWDA if the alleged
2 violation is cured, including a description of actions taken, and no civil
3 action pursuant to Section 2699 may commence. If the alleged violation
4 is not cured within the 33-day period, the aggrieved employee may
5 commence a civil action pursuant to Section 2699.

6 34. On May 30, 2024, Plaintiff provided written notice by online filing to the
7 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
8 Code alleged to have been violated, including facts and theories to support the alleged
9 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
10 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
11 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
12 Plaintiff PAGA Case Number LWDA-CM-1031186-24. A true and correct copy of Plaintiff's
13 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

17 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
20 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

1 to any other civil or criminal penalty provided by law.”

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

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

8 40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
9 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
10 private attorney general, seeks assessment and collection of civil penalties for himself, all
11 other aggrieved employees, and the State of California against Defendants for violations of
12 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d),
13 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

14 **CLASS ACTION ALLEGATIONS**

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

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

20 43. Plaintiff’s proposed class consists of and is defined as follows:

21 All persons who worked for Defendants as non-exempt, hourly
22 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial (“Class”).

23 44. Plaintiff’s proposed subclass consists of and is defined as follows:

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

27 45. Members of the Class and Subclass are referred to herein as “class members.”

28 46. Plaintiff reserves the right to redefine the Class and Subclass and to add

1 additional subclasses as appropriate based on further investigation, discovery, and specific
2 theories of liability.

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

- 5 (a) Whether Defendants required Plaintiff and class members to work over
6 eight (8) hours per day, over twelve (12) hours per day, or over forty
7 (40) hours per week and failed to pay all legally required overtime
8 compensation to Plaintiff and class members;
- 9 (b) Whether Defendants failed to include all forms of remuneration in the
10 regular rate of pay as required by law for purposes of paying overtime
11 wages and/or meal and rest period premiums to Plaintiff and class
12 members;
- 13 (c) Whether Defendants failed to pay Plaintiff and class members at least
14 minimum wages for all hours worked;
- 15 (d) Whether Defendants failed to provide Plaintiff and class members with
16 meal periods;
- 17 (e) Whether Defendants failed to authorize and permit Plaintiff and class
18 members to take rest periods;
- 19 (f) Whether Defendants provided Plaintiff and class members with
20 complete and accurate wage statements as required by California Labor
21 Code section 226(a);
- 22 (g) Whether Defendants maintained accurate payroll records as required by
23 California Labor Code section 1174(d);
- 24 (h) Whether Defendants failed to pay earned overtime wages, minimum
25 wages, meal and rest period premiums, and/or sick leave pay, due to
26 Plaintiff and class members upon their discharge;
- 27 (i) Whether Defendants failed timely to pay overtime wages, minimum
28 wages, meal and rest period premiums, and/or sick leave pay, due to

Plaintiff and class members during their employment;

- (j) Whether Defendants failed to properly calculate the regular rate of pay upon which Plaintiff's and class members' sick leave rate of pay was based, and failed to provide Plaintiff and class members with written notice of paid sick leave;
- (k) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (l) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (m) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and 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 acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration 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: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

1 50. Labor Code section 1198 makes it illegal to employ an employee under
2 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
3 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
4 shall be the . . . standard conditions of labor for employees. The employment of any employee
5 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

15 53. The applicable IWC Wage Order further provides that Defendants are and were
16 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
17 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
18 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
19 employee, including nondiscretionary bonuses and incentive pay.

20 54. California Labor Code section 510 codifies the right to overtime compensation
21 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
22 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
23 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
24 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
25 in a day on the seventh (7th) day of work.

26 55. During the relevant time period, Defendants willfully failed to pay all overtime
27 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
28 class members were not paid overtime premiums for all of the hours they worked in excess of

1 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
2 hours in a week, because all hours worked were not recorded.

3 56. During the relevant time period, Defendants had, and continue to have, a
4 company-wide policy and/or practice of requiring Plaintiff and class members to perform
5 tasks while off-the-clock. For example, approximately three (3) times per week, Plaintiff was
6 required to work after clocking out from his shifts, completing duties such as moving pallets
7 of packaged fruits and vegetables. Moreover, Defendants' managers contacted Plaintiff and
8 class members on their personal mobile devices about work-related matters when they were
9 not scheduled to work, but did not compensate them for this time. For example, Defendants'
10 managers called Plaintiff on his personal cellular phone outside of his scheduled shifts to
11 discuss work details such as produce inventory and storage. Thus, Defendants failed to track
12 all of the time that employees spent performing work-related tasks outside of their shifts, and
13 Plaintiff and class members received no compensation for this time.

14 57. Defendants knew or should have known that as a result of these company-wide
15 practices and/or policies, Plaintiff and class members were performing their assigned duties
16 off-the-clock outside of their shifts, and were suffered or permitted to perform work for which
17 they were not paid. Because Plaintiff and class members regularly worked shifts of eight (8)
18 hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work
19 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
20 overtime wages for all of the overtime hours they actually worked.

21 58. Moreover, Defendants did not pay Plaintiff and class members the correct
22 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
23 wage, Defendants paid Plaintiff and class members incentive pay, fringe pay, nondiscretionary
24 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
25 Code, Defendants failed to incorporate all compensation, including incentive pay, fringe pay,
26 nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
27 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
28 times when Plaintiff and class members worked overtime and received these other forms of

1 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
2 required.

3 59. For example, Defendants paid Plaintiff and class members incentive pay, fringe
4 pay, and/or nondiscretionary bonuses, which were listed on Plaintiff's and class members'
5 wage statements as "BONUS2" and "MEAL." During the pay periods that Plaintiff and class
6 members were paid overtime wages, Defendants did not incorporate these payments into
7 Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and
8 lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and
9 class members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay.
10 Defendants' failure to properly calculate the overtime rates of pay based on all remuneration
11 paid has resulted in an underpayment of overtime wages to Plaintiff and class members on a
12 company-wide basis.

13 60. Defendants' failure to pay Plaintiff and class members the balance of overtime
14 compensation as required by California law, violates the provisions of California Labor Code
15 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
16 members are entitled to recover from Defendants their unpaid overtime compensation, as well
17 as interest, costs, and attorneys' fees.

18 **SECOND CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 20 **Minimum Wages** 21 **(Against all Defendants)**

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

24 62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
25 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
26 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
27 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the
28 time during which an employee is subject to the control of an employer, and includes all the

1 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
2 Code Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

3 63. As stated above, Defendants had, and continue to have, a company-wide policy
4 of requiring Plaintiff and class members to perform tasks while off-the-clock, including
5 performing work duties after their scheduled shifts and communicating with management.
6 Defendants failed to track this time Plaintiff and class members spent working off-the-clock,
7 and Plaintiff and class members received no compensation for this time.

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

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

18 **THIRD CAUSE OF ACTION**

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

20 **Violations**

21 **(Against all Defendants)**

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

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

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

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

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

13 70. Under California law, an employer cannot evade meal period requirements via
14 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
15 *Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be
16 provided with the opportunity to eat his or her meal while performing the duties required and
17 any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long.
18 *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141
19 (2019).

20 71. First, Defendants had, and continue to have, company-wide policies and/or
21 practices of understaffing while assigning heavy workloads, including pressuring employees
22 to meet productivity expectations. For example, on information and belief, Defendants'
23 management implemented specific production goals which resulted in loading pallets on to 40
24 delivery vehicles per shift so those production goals could be met. Defendants' policies
25 and/or practices resulted in a lack of meal period coverage and prevented Plaintiff and class
26 members from taking all timely, uninterrupted meal periods to which they were entitled.
27 Further, Defendants had a company-wide practice and/or policy of failing to schedule meal
28 periods, which further caused Plaintiff and class members to not be relieved of their duties for

1 compliant meal periods.

2 72. As a result, Plaintiff and class members had to work through all or part of their
3 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
4 before taking meal periods. For example, twice per week, Plaintiff had his meal periods
5 interrupted to complete work assignments such as moving pallets of produce, loading produce
6 on to delivery vehicles, and responding to questions regarding inventory. Additionally, three
7 (3) times per week, Plaintiff missed his meal periods entirely or took his meal periods late,
8 after the fifth hour of work, due to loading delivery vehicles and the lack of meal period
9 coverage.

10 73. Second, Defendants had, and continue to have, a company-wide policy and/or
11 practice requiring that Plaintiff and class members carry and respond to company-issued
12 walkie talkies at all times, including during meal periods. For example, Plaintiff would have
13 his meal periods interrupted and/or shortened when management called his company-issued
14 walkie-talkie to discuss and the status of assignments.

15 74. Third, Defendants did not provide Plaintiff and class members with second 30-
16 minute meal periods on days that they worked in excess of ten (10) hours in one day. For
17 example, during the relevant time period, Plaintiff worked shifts in excess of ten (10) hours in
18 one day and never took a second meal period. Plaintiff and class members did not sign valid
19 meal period waivers on days that they were entitled to meal periods and were not relieved of
20 all duties. To the extent Defendants required Plaintiff and class members to sign written “on-
21 duty” meal period agreements, such agreements are invalid as the nature of the work
22 performed by Plaintiff and class members and do not necessitate an “on-duty” meal period
23 under California law.

24 75. At all times herein mentioned, Defendants knew or should have known that, as
25 a result of these policies, Plaintiff and class members were prevented from being relieved of
26 all duties and required to perform some of their assigned duties during meal periods.
27 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
28 members meal period premiums when meal periods were missed, shortened, interrupted,

1 and/or late.

2 76. Moreover, Defendants engaged in a company-wide practice and/or policy of
3 not paying meal period premiums owed when compliant meal periods are not provided.
4 Because of this practice and/or policy, Plaintiff and class members have not received premium
5 pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that
6 Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted
7 meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
8 premiums because Defendants systematically failed to include all forms of compensation,
9 such as incentive pay, fringe pay, nondiscretionary bonuses, and/or other forms of
10 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiff and
11 class members compliant meal periods in violation of California Labor Code sections 226.7,
12 512(a), and 516 and failed to pay the full meal period premiums due.

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

17 **FOURTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 19 **(Against all Defendants)**

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

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

25 80. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

81. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

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

83. Furthermore, on information and belief Defendants maintained and implemented a company-wide on-premises rest period policy, which effectively required that Plaintiff and class members remain on the premises during their rest periods. Because Plaintiff and class members were restricted from leaving Defendants’ premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, Defendants effectively maintained control over Plaintiff and class members during rest periods.

84. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff missed his rest periods or had his rest periods interrupted several times a week by management to discuss produce inventory or moving pallets.

85. Defendants have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods. Alternatively, to the extent that Defendants did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as incentive pay, fringe pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

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

FIFTH CAUSE OF ACTION

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

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

88. At all relevant times herein set forth, California Labor Code section 226(a)

1 provides that every employer shall furnish each of his or her employees an accurate and
2 complete itemized wage statement in writing, including, but not limited to, the name and
3 address of the legal entity that is the employer, the inclusive dates of the pay period, total
4 hours worked, and all applicable rates of pay.

5 89. At all relevant times, Defendants have knowingly and intentionally provided
6 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
7 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
8 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name
9 of the employee and only the last four digits of his or her social security number or an
10 employee identification number other than a social security number; the address of the legal
11 entity that is the employer; and all applicable hourly rates in effect during the pay period,
12 including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick
13 leave, and the corresponding number of hours worked at each hourly rate. Specifically,
14 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(7), 226(a)(8), and
15 226(a)(9).

16 90. First, Defendants failed to list the last four digits of Plaintiff's and Subclass
17 members' social security number or an employee identification number other than a social
18 security number on their wage statements, in violation of section 226(a)(7). Instead,
19 Plaintiff's wage statements either listed his full social security number or no social security
20 number or employee identification number at all.

21 91. Second, because Defendants did not record the time Plaintiff and Subclass
22 members spent working off the clock, Defendants did not list the correct amount of gross
23 wages and net wages earned by Plaintiff and Subclass members in compliance with sections
24 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
25 number of hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2),
26 and failed to list the applicable hourly rates of pay in effect during the pay period and the
27 corresponding accurate number of hours worked at each hourly rate, in violation of section
28 226(a)(9). Defendants also failed to correctly list all applicable hourly rates in effect during

1 the pay period, namely, correct rates of pay for overtime wages, in violation of section
2 226(a)(9).

3 92. Third, because Defendants did not calculate Plaintiff's and Subclass members'
4 regular rate of pay correctly for purposes of paying overtime wages, meal and rest period
5 premiums, and/or paid sick leave, Defendants did not list the correct amount of gross wages in
6 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
7 amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list
8 all applicable hourly rates in effect during the pay period, namely, correct rates of pay for
9 overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section
10 226(a)(9).

11 93. Fourth, and separate from these violations, Defendants issued uniform wage
12 statements to Plaintiff and Subclass members that fail to list the correct address of the legal
13 entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of
14 section 226(a)(8) is to provide California employees with transparency as to the true identity
15 of their employer, to allow the employee to contact their employer during employment or in
16 the future for various reasons, including filing an administrative claim, judicial claim, or other
17 action to seek relief against their employer, obtain unemployment benefits, etc. This includes
18 providing employees with a physical address of the employer and not a Post Office Box.
19 Plaintiff's and class members' wage statements incorrectly list the employer's address as "P.O
20 Box 278480, Sacramento, CA 95827" but, according to the California Secretary of State's
21 website, the correct address is "4450 Florin-Perkins Road, Sacramento, CA 95826."

22 94. The wage statement deficiencies also include, among other things, failing to list
23 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
24 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
25 for which employees were paid; failing to list the name of the legal entity that is the employer;
26 and/or failing to state all hours worked as a result of not recording or stating hours worked
27 off-the-clock.

28 95. California Labor Code section 1174(d) provides that "[e]very person employing

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

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

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

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

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

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

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

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

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

108. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by

1 California Labor Code section 204.

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

5 **EIGHTH CAUSE OF ACTION**

6 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

7 **(Against all Defendants)**

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

10 111. At all times herein set forth, California Labor Code section 2802 provides that
11 an employer must reimburse employees for all necessary expenditures and losses incurred by
12 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
13 to prevent employers from passing off their cost of doing business and operating expenses on
14 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
15 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
16 tools or equipment are required by the employer or are necessary to the performance of a job,
17 such tools and equipment shall be provided and maintained by the employer, except that an
18 employee whose wages are at least two (2) times the minimum wage provided herein may
19 provide and maintain hand tools and equipment customarily required by the trade or craft."
20 IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the
21 employer to be worn by the employee as a condition of employment, such uniforms shall be
22 provided and maintained by the employer."

23 112. First, during the relevant time period, Defendants required Plaintiff and class
24 members to use their personal mobile devices, including, but not limited to, cellular phones,
25 and/or mobile data to carry out their job duties but failed to reimburse them for the costs of
26 their work-related mobile device and/or mobile data expenses. For example, Plaintiff was
27 required to use his personal cellular phone to communicate with his managers to discuss
28 inventory, shipments, and other work-related issues. Although Defendants required Plaintiff

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

3 113. Second, during the relevant time period, Defendants had a company-wide
4 policy of requiring Plaintiff and class members to wear uniforms bearing the company name
5 and logo. Due to the nature of his work, Plaintiff's uniform items would become stained with
6 grease, sweat, soiled, and/or acquire an unpleasant odor such that he was unable to mix these
7 clothes in with other laundry. As a result, Plaintiff had to wash his uniform items separately
8 from his regular clothing, spending approximately \$10 per week at the laundromat, thus
9 incurring additional laundry expenses for the upkeep of his uniforms. Thus, Defendants failed
10 to maintain uniforms they required Plaintiff and class members to wear during their shifts and
11 forced them to incur the cost of maintaining employee uniforms.

12 114. Defendants could have provided Plaintiff and class members with the actual
13 equipment for use on the job, such as company mobile devices, and access to laundering
14 services. Or Defendants could have reimbursed employees for the cost of their mobile device
15 usage and laundering expenses or provided a uniform maintenance allowance. Instead,
16 Defendants passed these operating costs off onto Plaintiff and class members. At all relevant
17 times, Plaintiff did not earn at least two (2) times the minimum wage.

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

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

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1 **NINTH CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 118. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
9 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
10 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
11 those Labor Code sections not found in section 2699.5, including sections 246, 516, and
12 1182.12.

13 119. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

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

- 1 and/or other aggrieved employees with meal periods, as alleged herein;
- 2 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
- 3 applicable IWC Wage Order for Defendants' failure to authorize and
- 4 permit Plaintiff and other aggrieved employees to take rest periods, as
- 5 alleged herein;
- 6 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
- 7 IWC Wage Order for failure to provide accurate and complete wage
- 8 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 9 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
- 10 IWC Wage Order for failure to maintain payroll records, as alleged
- 11 herein;
- 12 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
- 13 earned wages upon termination, as alleged herein;
- 14 (i) Violation of Labor Code section 204 for failure to pay all earned wages
- 15 during employment, as alleged herein;
- 16 (j) Violation of Labor Code section 246 for failure to properly calculate the
- 17 sick leave paid to Plaintiff and other aggrieved employees and for
- 18 failure to provide written notice of paid sick leave benefits available, as
- 19 set forth below; and
- 20 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
- 21 and other aggrieved employees for all business expenses necessarily
- 22 incurred, as alleged herein.

23 120. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,

24 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more

25 days from the commencement of employment with paid sick days, to be accrued at least one

26 hour for every 30 hours worked. California Labor Code section 246(i) provides that an

27 employer must provide an employee with written notice that sets forth the amount of paid sick

28 leave available, or paid time off that an employer provides in lieu of sick leave, for use on

1 either the employee's itemized wage statement or in a separate written statement provided on
2 the designated pay date with the employee's wages. Further, Labor Code section 246(l)
3 provides that an employer shall calculate paid sick leave by using one of two calculations: 1)
4 "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the
5 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
6 not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for
7 nonexempt employees shall be calculated by dividing the employee's total wages, not
8 including overtime premium pay, by the employee's total hours worked in the full pay periods
9 of the prior 90 days of employment."

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

21 122. Moreover, during the relevant time period, Defendants failed, on a company-
22 wide basis, to provide Plaintiff and other aggrieved employees with written notice on wage
23 statements and/or other separate written statements that listed the amount of paid sick leave
24 (or equivalent paid leave or paid time off) available to them.

25 123. Defendants' failure to properly calculate the sick leave rates of pay based on all
26 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other
27 aggrieved employees on a company-wide basis in violation of California Labor Code section
28 246(l). Defendants' systematic failure to provide written notice of sick leave benefits to

1 Plaintiff and other aggrieved employees is in violation of Labor Code section 246(i). Plaintiff
2 and other aggrieved employees are therefore entitled to recover civil penalties pursuant to
3 Labor Code sections 248.5 and/or 2699(a), (f), and (g).

4 **TENTH CAUSE OF ACTION**

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

6 **Unlawful Business Practices**

7 **(Against all Defendants)**

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

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

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

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

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

- 24 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
25 class members, to work overtime without paying them proper
26 compensation in violation of California Labor Code sections 510 and
27 1198, and the applicable IWC Wage Order, as alleged herein;
28 (b) Failing to include all forms of remuneration in the regular rate of pay as

1 required by law for purposes of paying overtime wages and/or meal and
2 rest period premiums to Plaintiff and class members, in violation of
3 California Labor Code sections 226.7, 510, and 1198, and the applicable
4 IWC Wage Order, as alleged herein;

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

9 (d) Failing to provide all meal periods to Plaintiff and class members in
10 violation of California Labor Code sections 226.7, 512(a), 516, and
11 1198, and the applicable IWC Wage Order, as alleged herein;

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

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

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

21 (h) Failing to properly calculate the sick leave paid to Plaintiff and class
22 members and failing to provide written notice of paid sick leave benefits
23 available in violation of California Labor Code section 246, as set forth
24 below; and

25 (i) Failing to reimburse Plaintiff and class members for all business
26 expenses necessarily incurred in violation of California Labor Code
27 section 2802, as alleged herein.

28 129. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,

1 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
2 days from the commencement of employment with paid sick days, to be accrued at least one
3 hour for every 30 hours worked. Labor Code section 246(i) provides that an employer must
4 provide an employee with written notice that sets forth the amount of paid sick leave
5 available, or paid time off that an employer provides in lieu of sick leave, for use on either the
6 employee's itemized wage statement or in a separate written statement provided on the
7 designated pay date with the employee's wages. Further, Labor Code section 246(l) provides
8 that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid
9 sick time for nonexempt employees shall be calculated in the same manner as the regular rate
10 of pay for the workweek in which the employee uses paid sick time, whether or not the
11 employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt
12 employees shall be calculated by dividing the employee's total wages, not including overtime
13 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
14 days of employment."

15 130. During the relevant time period, Defendants did not pay Plaintiff and class
16 members the correct sick leave rates of pay. Defendants failed to correctly use either method
17 of calculation under Labor Code section 246(l) to determine Plaintiff's and class members'
18 sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and
19 class members incentive pay, fringe pay, nondiscretionary bonuses, and/or other forms of
20 remuneration. However, in violation of the California Labor Code, Defendants failed to
21 incorporate all remunerations, including incentive pay, fringe pay, and/or nondiscretionary
22 bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick
23 leave pay rate. Therefore, during times when Plaintiff and class members took sick leave and
24 received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a
25 lower sick leave pay rate than required. Specifically, Defendants paid Plaintiff and class
26 members sick leave based on their hourly rate of pay instead of their regular rate of pay.

27 131. Moreover, during the relevant time period, Defendants failed, on a company-
28 wide basis, to provide Plaintiff and class members with written notice on wage statements

1 and/or other separate written statements that listed the amount of paid sick leave (or
2 equivalent paid leave or paid time off) available to them.

3 132. Defendants' failure to properly calculate the sick leave rates of pay based on all
4 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class
5 members on a company-wide basis in violation of Labor Code section 246(l). Defendants'
6 systematic failure to provide written notice of sick leave benefits to Plaintiff and class
7 members is in violation of Labor Code section 246(i).

8 133. As a result of the violations of California law herein described, Defendants
9 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
10 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
11 herein.

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

18 **ELEVENTH CAUSE OF ACTION**

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

20 **Unfair Business Practices**

21 **(Against all Defendants)**

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

24 136. Defendants are "persons" as defined by California Business & Professions
25 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
26 and/or associations.

27 137. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
28 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered

injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

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

139. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

//

1 **PRAYER FOR RELIEF**

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

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

7 **Class Certification**

8 2. That this case be certified as a class action;

9 3. That Plaintiff be appointed as the representative of the Class and Subclass;

10 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

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

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

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

27 11. For general unpaid wages and such general and special damages as may be
28 appropriate;

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

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

As to the Fourth Cause of Action

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

24. That the Court make an award to the Plaintiff and class members of one (1) hour

of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

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

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

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

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

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

As to the Fifth Cause of Action

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

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

32. For injunctive relief pursuant to California Labor Code section 226(h);

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

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

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

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay owed at the time of termination of the

employment of Plaintiff and other terminated class members;

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

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

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

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

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

As to the Seventh Cause of Action

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

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

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

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

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

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

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
2 related expenses and costs incurred by Plaintiff and class members;

3 49. For unpaid business-related expenses and such general and special damages as
4 may be appropriate;

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

7 51. For all actual, consequential, and incidental losses and damages, according to
8 proof;

9 52. For attorneys' fees and costs pursuant to California Labor Code section
10 2802(c), or as otherwise provided by law; and

11 53. For such other and further relief as the Court may deem equitable and
12 appropriate.

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

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

26 55. For civil penalties pursuant to the California Labor Code sections 210, 226.3,
27 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
28 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,

1198, and 2802;

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

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

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

As to the Tenth Cause of Action

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

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

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

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

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

As to the Eleventh Cause of Action

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

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

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

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

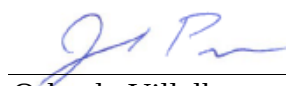
68. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: August 5, 2024

Respectfully submitted,

Capstone Law APC

By: 

Orlando Villalba

Helga Hakimi

Joseph D. Parsons

Attorneys for Plaintiff Juan Solorzano

EXHIBIT “1”



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JEZZETTE RON
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May 30, 2024

VIA ONLINE SUBMISSION

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

Subject: *Juan Solorzano v. Produce Express, Inc.*

Dear PAGA Administrator:

This office represents Juan Solorzano in connection with his claims under the California Labor Code. Mr. Solorzano was an employee of PRODUCE EXPRESS, INC. ("PEI").

The employer may be contacted directly at the address below:

PRODUCE EXPRESS, INC.
4450 FLORIN-PERKINS ROAD
SACRAMENTO, CA 95826

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

PEI employed Mr. Solorzano as an hourly paid, non-exempt employee from approximately November 1999 to December 2023. Mr. Solorzano worked for PEI as a Warehouse Worker, assigned to work at its facility in Sacramento, California. During his employment, Mr. Solorzano typically worked ten (10) hours or more per day and six (6) days or more per week. At the time his employment ended, Mr. Solorzano was compensated approximately \$27.00 per hour. Mr. Solorzano's job duties included, without limitation, loading and unloading vehicles, conducting inventory, drafting inventory reports, and operating forklifts and pallet jacks.

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

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

PRODUCE EXPRESS, INC. is a California corporation. PEI is a wholesale distributor of fresh fruits and vegetables in the greater Sacramento Valley. Upon information and belief, PEI maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Sacramento, California, for all non-exempt, hourly paid employees working for PEI in California, including Mr. Solorzano and other aggrieved employees. At all relevant times, PEI issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Solorzano and other aggrieved employees, regardless of their location or position.

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

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

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

PEI willfully failed to pay all overtime wages owed to Mr. Solorzano and other aggrieved employees. During the relevant time period, Mr. Solorzano and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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

First, during the relevant time period, PEI had, and continues to have, a company-wide policy and/or practice of requiring Mr. Solorzano and other aggrieved employees to perform tasks while off-the-clock. For example, approximately three (3) times per week, Mr. Solorzano was required to work after clocking out from his shifts, completing duties such as moving pallets of packaged fruits and vegetables. Moreover, PEI's managers contacted Mr. Solorzano and other aggrieved employees on their personal mobile devices about work-related matters when they were not scheduled to work, but did not compensate them for this time. For example, PEI's managers called Mr. Solorzano on his cellular phone outside of his scheduled shifts to discuss work details such as produce inventory and storage. Thus, PEI failed to track all of the time that employees spent performing work-related tasks outside of their shifts, Mr. Solorzano and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, PEI had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, including pressuring employees to meet productivity requirements. PEI's policies and/or practices resulted in a failure to provide other aggrieved employees with adequate meal period coverage, and thus, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. PEI also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, PEI had, and continues to have, a company-wide policy and/or practice requiring that other aggrieved employees carry and respond to company-issued walkie talkies at all times, including during meal periods. PEI did not compensate other aggrieved employees for the time they spent working off the clock during meal periods.

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

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

For example, PEI paid Mr. Solorzano and other aggrieved employees incentive pay, fringe pay, and/or nondiscretionary bonuses, which were listed on Mr. Solorzano's and other aggrieved employees' wage statements as "BONUS2" and "MEAL." During the pay periods that Mr. Solorzano and other aggrieved employees were paid overtime wages, PEI did not incorporate these payments into Mr. Solorzano's and other aggrieved employees' regular rate of pay and, as a result,

paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, PEI paid Mr. Solorzano and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. PEI's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Solorzano and other aggrieved employees on a company-wide basis.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, as stated above, PEI had, and continues to have, a company-wide policy of requiring Mr. Solorzano and other aggrieved employees to perform tasks while off-the-clock, including performing work duties after their scheduled shifts and communicating with management. PEI failed to track this time Mr. Solorzano and other aggrieved employees spent working off-the-clock, and Mr. Solorzano and other aggrieved employees received no compensation for this time.

Second, as stated above, due to PEI's policies and/or practices of understaffing its facilities while assigning heavy workloads, including productivity requirements, and failing to schedule meal periods, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as also stated, PEI had a company-wide policy and/or practice of requiring that other aggrieved employees carry company-issued walkie-talkies to respond to requests at all times, including during meal periods.

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

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

First, as stated, PEI had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet productivity expectations. For example, on information and belief, PEI's management implemented specific production goals which resulted in loading pallets on to 40 delivery vehicles per shift so those production goals could be met. PEI's policies and/or practices resulted in a lack of meal period coverage and prevented Mr. Solorzano and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, PEI had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Solorzano and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Solorzano and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, twice per week, Mr. Solorzano had his meal periods interrupted to complete work assignments such as moving pallets of produce, loading produce on to delivery vehicles, and responding to questions regarding inventory. Additionally, three (3) times per week, Mr. Solorzano missed his meal periods entirely or took his meal periods late, after the fifth hour of work, due to loading delivery vehicles and the lack of meal period coverage.

Second, as also stated, PEI had a company-wide policy and/or practice requiring that Mr. Solorzano and other aggrieved employees carry and respond to company-issued walkie talkies at all times, including during meal periods. For example, Mr. Solorzano would have his meal periods interrupted and/or shortened when management called his company-issued walkie-talkie to discuss the status of assignments.

Third, PEI did not provide Mr. Solorzano and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Solorzano worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Solorzano and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. To the extent PEI required Mr. Solorzano and other aggrieved employees to sign written “on-duty” meal period agreements, such agreements are invalid as the nature of the work performed by Mr. Solorzano and other aggrieved employees and do not necessitate an “on-duty” meal period under California law.

PEI knew or should have known that as a result of its company-wide policies and/or practices, Mr. Solorzano and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PEI further knew or should have known that it did not pay Mr. Solorzano and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the

obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

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

Furthermore, upon information and belief, PEI maintained a company-wide on-premises rest period policy, which effectively required that Mr. Solorzano and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Solorzano and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, PEI effectively maintained control over Mr. Solorzano and other aggrieved employees during rest periods.

As a result of PEI’s practices and policies, Mr. Solorzano and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Solorzano missed his rest periods or had his rest periods interrupted several times a week by management to discuss produce inventory or moving pallets.

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

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

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

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

employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PEI has knowingly and intentionally provided Mr. Solorzano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PEI issued uniform wage statements to Mr. Solorzano and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, PEI violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(7), 226(a)(8), and 226(a)(9).

First, PEI failed to list the last four digits of Mr. Solorzano's and other aggrieved employees' social security number or an employee identification number other than a social security number on their wage statements, in violation of section 226(a)(7). Instead, Mr. Solorzano's wage statements either listed his full social security number or no social security number or employee identification number at all.

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

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

Fourth, and separately from these violations, PEI issued uniform wage statements to Mr. Solorzano and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Solorzano's and other aggrieved employees' wage statements incorrectly list the employer's address as "P.O BOX 278480, SACRAMENTO, CA 95827," but, according to the California Secretary of State's website, the correct address is "4450 Florin-Perkins Road, Sacramento, CA 95826."

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PEI willfully failed to maintain accurate payroll records for Mr. Solorzano and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, PEI engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Solorzano and other aggrieved employees, in violation of section 1198. Furthermore, in light of PEI’s failure to provide Mr. Solorzano and other aggrieved employees with second 30-minute meal periods to which they were entitled, PEI kept no records of meal start and end times for second meal periods.

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon

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

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

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

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

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

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

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

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave and Provide Written Notice of Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Labor Code section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not

the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, PEI did not pay Mr. Solorzano and other aggrieved employees the correct sick leave rates of pay. PEI failed to correctly use either method of calculation under Labor Code section 246(l) to determine Mr. Solorzano's and other aggrieved employees' sick leave rates of pay. As stated, in addition to an hourly wage, PEI paid Mr. Solorzano and other aggrieved employees incentive pay, fringe pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PEI failed to incorporate all remunerations, including incentive pay, fringe pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Solorzano and other aggrieved employees took sick leave and received these other forms of pay, PEI failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, PEI paid Mr. Solorzano and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

Moreover, during the relevant time period, PEI failed, on a company-wide basis, to provide Mr. Solorzano and other aggrieved employees with written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them.

PEI's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Solorzano and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l). PEI's systematic failure to provide written notice of sick leave benefits to Mr. Solorzano and other aggrieved employees is in violation of Labor Code section 246(i).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

First, during the relevant time period, PEI required Mr. Solorzano and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to

carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Solorzano was required to use his personal cellular phone to communicate with his managers to discuss inventory, shipments, and other work-related issues. Although PEI required Mr. Solorzano and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, PEI failed to reimburse them for their costs incurred.

Second, during the relevant time period, PEI had a company-wide policy of requiring Mr. Solorzano and other aggrieved employees to wear uniforms bearing the company name and logo. Due to the nature of his work, Mr. Solorzano's uniform items would become stained with grease, sweat, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, Mr. Solorzano had to wash his uniform items separately from his regular clothing, spending approximately \$10 per week at the laundromat, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, PEI failed to maintain uniforms they required Mr. Solorzano and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

PEI could have provided Mr. Solorzano and other aggrieved employees with the actual equipment for use on the job, such as mobile devices, and access to laundering services. Or, PEI could have reimbursed employees for their mobile device usage and laundering expenses or provided a uniform maintenance allowance. Instead, PEI passed these operating costs off onto Mr. Solorzano and other aggrieved employees. At all relevant times, Mr. Solorzano did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

Accordingly, Mr. Solorzano seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Solorzano, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against PEI

for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

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- Attach this card to the back of the mailpiece.

PRODUCE EXPRESS, INC.
4450 FLORIN-PERKINS ROAD
SACRAMENTO, CA 95826



2. A18500103402170670720754503

7022 2410 0000 2264 9674

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent
X ☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

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

Service Type

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

Domestic Return Receipt

PROOF OF SERVICE

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

On **August 5, 2024**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

David Shafer
22915 Montclair Court
Grass Valley, CA 95949

Registered Agent for Defendant:
PRODUCE EXPRESS, INC.

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

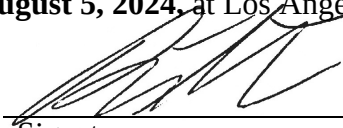
☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 5, 2024**, at Los Angeles, California.

Riley McIntire
Type/Print Name


Signature