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County of Placer
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

EDUARDO JUAREZ, an individual, and on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

WRIGHT CELEBRATIONS, INC., a
California Corporation, and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO.: S-CV-0053190

**INDIVIDUAL AND PAGA
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
2. Failure to Pay Overtime Wages In Violation of Labor Code § 510
3. Failure to Provide Lawful Meal Periods And Pay Meal Period Premiums Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Lawful Rest Periods And Pay Rest Period Premiums Pursuant to Labor Code § 226.7
5. Penalties Pursuant to Labor Code § 226(e)
6. Waiting Time Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2810.5

1 Plaintiff EDUARDO JUAREZ, an individual and as a private attorney general pursuant to
2 Labor Code § 2698 *et seq.*, complains of Defendant WRIGHT CELEBRATIONS, INC. (“Wright
3 Celebrations”) and the Doe Defendants (“Defendants”) and each of them, as follows:

4 I.

5 **INTRODUCTION AND FACTUAL BACKGROUND**

6 1. This is a representative action brought pursuant to Labor Code § 2698, *et seq.*, on
7 behalf of the State of California and several groups of aggrieved employees defined as follows:

- 8 (1) all non-exempt employees who were employed by Wright Celebrations, Inc. or its
9 predecessor, merged or related entities (including any integrated enterprises, alter
10 egos, or joint employers) in California at any point from May 6, 2023 and continuing
11 into the present. (“Wright Non-Exempt Aggrieved Employees”);
- 12 (2) all non-exempt, hourly employees who were employed by Wright Celebrations, Inc.
13 or its predecessor, merged or related entities (including any integrated enterprises,
14 alter egos, or joint employers) in California at any point from May 6, 2023 and
15 continuing into the present. (“Hourly Non-Exempt Aggrieved Employees”);
- 16 (3) all individuals who were employed by Wright Celebrations, Inc. or its predecessor,
17 merged or related entities (including any integrated enterprises, alter egos, or joint
18 employers) in California as a non-exempt, hourly employee or other similar position
19 and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours
20 in a week during a pay period from May 6, 2023 and continuing into the present.
21 (“General Overtime Aggrieved Employees”);
- 22 (4) all individuals who were employed by Wright Celebrations, Inc. or its predecessor,
23 merged or related entities (including any integrated enterprises, alter egos, or joint
24 employers) in California as a non-exempt, hourly employee or other similar position
25 and who worked a shift of more than twelve (12) hours in a day and/or forty (40)
26 hours in a week during a pay period from May 6, 2023 and continuing into the
27 present. (“Doubletime Overtime Aggrieved Employees”);
- 28 (5) all individuals who were employed by Wright Celebrations, Inc. or its predecessor,
merged or related entities (including any integrated enterprises, alter egos, or joint
employers) for one or more pay periods in California as a non-exempt, hourly
employee and who worked a shift of more than eight (8) hours in a day and/or forty
(40) hours in a week during a period where they also received non-discretionary
bonuses, incentive payment/pay, shift differentials, hazard pay, piece rate
compensation, flat sum production bonuses, non-discretionary production bonuses,

attendance bonuses, prevailing wages, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes “PLA” or “X” from May 6, 2023 and continuing into the present. (“Regular Rate Overtime Aggrieved Employees”);

- (6) all individuals who were employed by Wright Celebrations, Inc. or its predecessor, merged or related entities (including any integrated enterprises, alter egos, or joint employers) for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than twelve (12) hours in a week during a period where they also received non-discretionary bonuses, incentive payment/pay, shift differentials, hazard pay, piece rate compensation, flat sum production bonuses, non-discretionary production bonuses, attendance bonuses, prevailing wages, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes “PLA” or “X” from May 6, 2023 and continuing into the present. (“Regular Rate Doubletime Aggrieved Employees”);

Collectively, aggrieved employee groups three (3), four (4), five (5), and six (6) may be referred to as the “Overtime Aggrieved Employees.”

- (7) all individuals who were employed by Wright Celebrations, Inc. or its predecessor, merged or related entities (including any integrated enterprises, alter egos, or joint employers) in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from May 6, 2023 and continuing into the present. (“General Meal Period Aggrieved Employees”);

- (8) all individuals who were employed by Wright Celebrations, Inc. or its predecessor, merged or related entities (including any integrated enterprises, alter egos, or joint employers) in California who were paid a meal and/or rest period premium within the same week that they also received non-discretionary bonuses, incentive payment/pay, shift differentials, hazard pay, piece rate compensation, flat sum production bonuses, non-discretionary production bonuses, attendance bonuses, prevailing wages, any other form of non-discretionary bonus and/or incentive payment and/or a payment under the pay codes “PLA” or “X” from May 6, 2023 and continuing into the present. (“Meal/Rest Period Premium Aggrieved Employees”);

Collectively, aggrieved employee groups seven (7), eight (8), nine (9), and ten (10) may be referred to as the “Meal Period Aggrieved Employees.”

- (9) all individuals who were employed by Wright Celebrations, Inc. or its predecessor, merged or related entities (including any integrated enterprises, alter egos, or joint employers) in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction

thereof from May 6, 2023 and continuing into the present. (“General Rest Period Aggrieved Employee”);

Collectively, aggrieved employee groups eight (8) and nine (9) may be referred to as the “Rest Period Aggrieved Employees.”

(10) all individuals who were employed by Wright Celebrations, Inc. or its predecessor, merged or related entities (including any integrated enterprises, alter egos, or joint employers) for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between May 6, 2023 and continuing into the present. (“General Late Payment Aggrieved Employees”);

(11) all individuals who were employed by Wright Celebrations, Inc. or its predecessor, merged or related entities (including any integrated enterprises, alter egos, or joint employers) for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between May 6, 2023 and continuing into the present; (“Sick Pay Late Payment Aggrieved Employee”);

Collectively, aggrieved employee groups nine (9) and ten (10) may be referred to as the “Late Payment Aggrieved Employees.”

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate.

2. Plaintiff and the aggrieved employees were employed by Defendant Wright Celebrations, Inc. and any subsidiaries or affiliated companies and Does 1 through 50 (who include individuals acting on behalf an employer within the meaning of Labor Code § 558.1) within the State of California as a non-exempt, hourly employees at some point between May 6, 2023 and the present. Plaintiff is a former employee of Defendants who worked for Defendants in California from in or around January 2017 until in or around March 4, 2024.

3. At times throughout their employment with Defendants, including within the past year and continuing into the present,¹ Plaintiff and the aggrieved employees worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8) hours in a day, ten (10) hours in a day, twelve (12) hours in a day and/or worked in excess of forty (40) hours in a week or more.

¹ References to continuing into the present herein refer to actions taken by Defendants towards the aggrieved employees, and not Plaintiff, whose employment with Defendants ended in March 2024.

1 4. At times throughout their employment with Defendants, including within the past
2 year and continuing into the present, Plaintiff and the aggrieved employees worked enough hours
3 to be eligible to receive overtime wages under IWC Wage Order Nos. 4-2001, 7-2001, other
4 applicable Wage Order, and/or Labor Code section 510.

5 5. Defendants hire employees to work within the state of California who are covered
6 by California Industrial Welfare Commission Occupational Wage Order Nos. 4-2001 and 7-2001.
7 Based upon information and belief, Defendants classified Plaintiff and the aggrieved employees
8 as non-exempt for the purposes of overtime, meal periods, and rest periods.

9 6. Plaintiff and the aggrieved employees received at least one wage statement from
10 Defendants within the past year.

11 7. Labor Code § 1197 states the California requirement that employees must be paid
12 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
13 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
14 “any employee receiving less than the legal minimum wage...to recover in a civil action the
15 unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 4-2001, 7-
16 2001, and/or other applicable wage orders obligate employers to pay each employee minimum
17 wages for all hours worked.

18 8. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
19 standard conditions of labor fixed by the commission shall be the maximum hours of work and
20 the standard conditions of labor for employees. The employment of any employee for longer
21 hours than those fixed by the order or under conditions of labor prohibited by the order is
22 unlawful.”

23 9. At times during their employment with Defendants, including within the past year
24 and continuing into the present, Defendants engaged in a common policy and practice of
25 requiring Plaintiff and the aggrieved employees to perform work while off-the-clock. This
26 includes, but is not limited to, due to Defendants’ policy and practice of not paying Plaintiff
27 and/or the aggrieved employees for the time spent reviewing schedules and other communications
28 sent using electronic communication devices while off-the-clock—this issue was particularly

1 notable because schedules were often sent daily due to Plaintiff and the aggrieved employees'
2 irregular start times—for required and/or expected pre-shift activities, impermissibly rounding
3 employees' time entries (including start times, time entries associated with meal periods, and stop
4 times), failing to pay minimum wages in accordance with the local municipal wage ordinances in
5 effect for their job assignments, automatically deducting the time associated with meal periods
6 regardless of whether or not the employee received a meal period, failing to compensate
7 employees for the time associated with uniform maintenance, for the time associated with filling
8 up gas and/or replacing gas consumed in the discharge of the employee's job duties, picking up
9 supplies, due to Defendants' communications with employees (whether by phone call, email, text
10 message, or other method) while off-the-clock, failing to record all hours worked, for
11 uncompensated time spent donning and doffing uniforms, and for the time spent working during
12 interrupted meal and/or rest periods.

13 10. Based upon information and belief, Defendants' conduct in failing to pay Plaintiff,
14 and the aggrieved employees for such time was willful within the meaning of the California
15 Labor Code.

16 11. Labor Code § 510 requires an employer to compensate an employee who works
17 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
18 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
19 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
20 employees at no less than twice the regular rate of pay when an employee works more than
21 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
22 In accordance with Labor Code § 1194, Plaintiff and the aggrieved employees could not agree to
23 work for a lesser wage.

24 12. At times during their employment with Defendants, including but not limited to
25 within the past year and continuing into the present, Defendants engaged in a common policy and
26 practice of requiring Plaintiff, and the aggrieved employees to perform work while off-the-clock.
27 This includes, but is not limited to, due to Defendants' policy and practice of not paying Plaintiff
28 and/or the aggrieved employees for the time spent reviewing schedules and other communications

1 sent using electronic communication devices while off-the-clock—this issue was particularly
2 notable because schedules were often sent daily due to Plaintiff and the aggrieved employees’
3 irregular start times—for required and/or expected pre-shift activities, impermissibly rounding
4 employees’ time entries (including start times, time entries associated with meal periods, and stop
5 times), failing to pay minimum wages in accordance with the local municipal wage ordinances in
6 effect for their job assignments, automatically deducting the time associated with meal periods
7 regardless of whether or not the employee received a meal period, failing to compensate
8 employees for the time associated with uniform maintenance, for the time associated with filling
9 up gas and/or replacing gas consumed in the discharge of the employee’s job duties, picking up
10 supplies, due to Defendants’ communications with employees (whether by phone call, email, text
11 message, or other method) while off-the-clock, failing to record all hours worked, for
12 uncompensated time spent donning and doffing uniforms, and for the time spent working during
13 interrupted meal and/or rest periods. As a result, Defendant often misclassified overtime hours as
14 regular hours resulting in the underpayment of overtime wages and also failed to provide at least
15 some of the aggrieved employees with any compensation for overtime hours whatsoever. For the
16 same reasons as explained in detail above, Defendant also improperly failed to provide
17 compensation for and/or misclassified doubletime hours as overtime hours or regular hours when
18 the aggrieved employees worked more than twelve (12) hours in a day and/or more than eight (8)
19 hours on the seventh day of work.

20 13. Based upon information and belief, at times during their employment with
21 Defendants and including within the past year and continuing into the present, Defendants paid
22 Plaintiff and at least some of the aggrieved employees non-discretionary bonuses, incentive
23 payment/pay, shift differentials, hazard pay, piece rate compensation, flat sum production
24 bonuses, non-discretionary production bonuses, attendance bonuses, prevailing wages, any other
25 form of non-discretionary bonuses and/or incentive payment and/or a payment under the pay
26 codes “PLA” and/or “X” but failed to include such compensation when calculating and paying
27 overtime wages.
28

1 14. Based upon information and belief, at times during their employment with
2 Defendants and including within the past year and continuing into the present, instead of
3 including all required compensation when calculating and paying overtime wages (including
4 double time wages when the aggrieved employees worked shifts in excess of 12 hours),
5 Defendant instead improperly paid overtime wages only at one and one-half times Plaintiff and
6 the other aggrieved employees' regular hourly base rate instead of at one and one-half time their
7 regular rate of pay. In other words, Defendants sometimes improperly failed to include non-
8 discretionary bonus, incentive payment/pay, shift differential, hazard pay, piece rate
9 compensation, flat sum production bonuses, non-discretionary production bonuses, attendance
10 bonuses, prevailing wages, any other form of non-discretionary bonus and/or incentive payment
11 and/or a payment under the pay codes ""PLA" and/or "X" when calculating and paying overtime
12 wages.

13 15. Labor Code § 512 requires employers to provide employees with thirty (30)
14 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
15 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
16 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
17 may not employ an employee for a work period of more than ten (10) hours, without providing
18 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
19 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

20 16. Similarly, IWC Wage Order Nos. 4-2001, 7-2001, and other applicable wage
21 orders prohibit an employer from "employ[ing] any person for a work period of more than five
22 (5) hours without a meal period of not less than 30 minutes." IWC Wage Order Nos. 4-2001, 7-
23 2001, and other applicable wage orders further obligates employers to provide an employee to
24 "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
25 workday that the meal period is not provided." Labor Code section 1198 prohibits an employer
26 from requiring an employee to work beyond the "standard conditions of labor fixed by the
27 commission...or under conditions of labor prohibited by the order."
28

1 17. Labor Code § 226.7 provides “an employer shall not require an employee to work
2 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
3 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC
4 Wage Order No. 5-2001 prohibit an employer from “employ[ing] any person for a work period of
5 more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order
6 Nos. 4-2001, 7-2001, and/or other applicable wage order further obligate employers to provide an
7 employee to “pay the employee one (1) hour of pay at the employee’s regular rate of
8 compensation for each workday that the meal period is not provided. Accordingly, for each day
9 that Plaintiff and the aggrieved employees did not receive compliant meal periods, they were
10 entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order
11 Nos. 4-2001, 7-2001, and/or other applicable wage order.

12 18. At times during their employment and within the past year and continuing into the
13 present, Defendants failed to authorize and permit Plaintiff and the aggrieved employees to
14 receive lawful meal periods, failed to advise them of their right to such meal periods, failed to
15 authorize and permit them to take timely first meal periods, failed to authorize and permit them to
16 take second meal periods, rounded the time entries associated with meal periods, and failed to
17 authorize and permit employees to take 30-minute meal periods on occasion, failed to relieve
18 them of all duties during their meal periods, improperly rounded meal periods, interrupted meal
19 periods , based upon information and belief, and/or through their staffing and other policies
20 encouraged its customers to interrupt Plaintiff and the aggrieved employees meal periods.

21 19. At times during their employment and within the past year and continuing into the
22 present, Defendants also failed to authorize and permit Plaintiff and the other aggrieved
23 employees to receive lawful second meal periods when they worked more shifts in excess of ten
24 (10) hours per day and/or twelve (12) hours in a day. This includes, but is not limited to, failing to
25 advise Plaintiff and the other aggrieved employees of their right to take a second thirty (30) meal
26 period on such shifts and/or that they could not waive their second meal period if they worked a
27 shift in excess of (12) hours.

20. At times during their employment and within the past year and continuing into the present, Defendants' meal period policies and practices also disincentivized and discouraged Plaintiff and the aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift, thirty (30) minute meal periods, and/or second meal periods. Defendants' understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and/or forgo meal periods due to a lack of sufficient coverage and receive interrupted meal periods.

21. For instance, on September 22, 2023, Plaintiff worked at least 7.33 hours without receiving a first meal period and did not receive a second meal period even though he worked more than 12 hours:

Fri	09/22/2023	06:10 AM - 01:30 PM	7.33		000000
Fri	09/22/2023	02:00 PM - 07:04 PM	5.07		000000
Fri	09/22/2023	07:04 PM - 08:04 PM	1.00	13.40 PDLCHAWD	000000

22. Similarly, on September 26, 2023, December 11, 2023, and December 12, 2023, Plaintiff worked shifts in excess of ten (10) and/or twelve (12) hours in length, but was not authorized and permitted nor did he receive a second meal period.

Tue	09/26/2023	07:11 AM - 11:30 AM	4.32		000000	TENTI
Tue	09/26/2023	12:00 PM - 06:09 PM	6.15	10.47	000000	TENTI

Mon	12/11/2023	04:43 AM - 08:45 AM	4.03		
Mon	12/11/2023	09:15 AM - 06:18 PM	9.05	13.08	
Tue	12/12/2023	04:41 AM - 10:30 AM	5.82		
Tue	12/12/2023	11:00 AM - 07:00 PM	8.00		
Tue	12/12/2023	07:00 PM - 08:00 PM	1.00	14.82 PDLCHAWD	

23. At times during their employment and within the past year and continuing into the present, Defendants' meal period policies and practices disincentivized and discouraged Plaintiff and the other aggrieved employees from taking lawful meal periods due to issues related to understaffing, customer demands, and job assignments. As a result of Defendants' understaffing practices and policies, it was often not possible for Plaintiff and the other aggrieved employees to take meal periods and/or timely meal periods within the first five (5) hours of their shift and/or

thirty (30) minutes in length. Notably, although Defendant's meal period policies and practices are not compliant, it also pressured and coerced employees to forgo meal periods and made it difficult for employees to take lawful duty-free meal periods. Defendant's understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and/or forced to forgo first and/or second meal periods (including, but not limited to, on shifts worked in excess of 12 hours).

24. At times during their employment and within the past year and continuing into the present, Defendants further violated Labor Code § 512 by failing to authorize timely meal periods within the first (5) hours of an employees' shift. Defendants' maintained a policy and practice of requiring Plaintiff and the aggrieved employees to waive first meal periods when working shifts of less than six (6) hours. In doing so, Defendants pressured and disincentivized employees from taking meal periods within the first five (5) hours of their shift. As employees did not know in advance whether or not they would work more than six (6) hours and were not permitted to take meal periods and/or discouraged from taking meal periods on shifts of less than six hours, Plaintiff and the aggrieved employees were not offered the opportunity to take a meal period within the first five (5) hours of their shift. Neither Plaintiff nor the aggrieved employees were given the opportunity to take a timely first meal period because they were not scheduled to be eligible to receive a meal period and did not know they were eligible for a timely period until after working more than six (6) hours at which point it was not possible for them to take a meal period within the first five (5) hours. Simply put, it's not possible for an employee to decide whether or not to take a timely first meal period when Defendants schedules them for a shift of six (6) hours or less such that they wouldn't have even known they were eligible for a meal period at the 5th hour.

25. At times during their employment and within the past year and continuing into the present, Defendants also sometimes actively interfered with aggrieved employees' right to receive lawful meal periods including, The aggrieved employees' meal periods were also interrupted by their supervisors and other managers, customers, and/or by people asking them questions and by Defendants and its supervisory/managerial employees requiring and/or suffering or permitting

1 them to perform work while they were supposed to be on their meal period (including when they
2 were clocked-out).

3 26. At times during their employment and within the past year and continuing into the
4 present, Defendants also failed to provide uninterrupted meal periods of at least thirty (30)
5 minutes in length, including but not limited due to its policy and practice of rounding the time
6 entries associated with meal periods, understaffing conditions, and the job demands of aggrieved
7 employees. Such practices sometimes made it impossible for the aggrieved employees to take
8 thirty (30) minute uninterrupted meal periods. Defendant also engaged in a common pattern and
9 practice of rounding meal period punches in violation of Labor Code sections 1194, 510, 512, and
10 226.7. As the California Supreme Court held in *Donohue v. Amn Servs.*, 11 Cal.5th 58, 81 (2021)
11 employers cannot engage in the practice of rounding time punches—that is, adjusting the hours
12 that an employee has actually worked to the nearest present time increment—in the meal period
13 context. Here, as in *Donohue*, Defendants engaged in a common policy and practice of rounding
14 Plaintiff and the other aggrieved employees time punches such that they did not receive minimum
15 wages for all hours worked, overtime wages for the improperly rounded time punches, did not
16 receive meal period premiums for rounded time punches, and/or proper and lengthy meal periods.
17 This includes, but is not limited to due to failing to record the actual time that Plaintiff and the
18 other aggrieved employees clocked-out for meal periods. For instance, Plaintiff and the other
19 aggrieved employees’ time records often showed that they took a meal period at some point
20 during a several hour period of always exactly 30 minutes in length regardless of the actual
21 amount of time associated with meal periods due to Defendants’ unlawful rounding policy as
22 evidenced below:

23	Sat	09/16/2023	07:13 AM - 11:45 AM	4.53	
24	Sat	09/16/2023	12:15 PM - 06:34 PM	6.32	10.85
25	Sun	09/17/2023	05:40 AM - 10:00 AM	4.33	
26	Sun	09/17/2023	10:30 AM - 12:20 PM	1.83	
27	Sun	09/17/2023	12:20 PM - 02:45 PM	2.42	Drive Time
28	Sun	09/17/2023	02:45 PM - 02:53 PM	0.13	8.71
	Mon	09/18/2023	08:40 AM - 01:00 PM	4.33	
	Mon	09/18/2023	01:30 PM - 06:25 PM	4.92	9.25
	Tue	09/19/2023	08:12 AM - 12:30 PM	4.30	
	Tue	09/19/2023	01:00 PM - 03:01 PM	2.02	6.32
	Thu	09/21/2023	07:44 AM - 12:00 PM	4.27	
	Thu	09/21/2023	12:30 PM - 04:08 PM	3.63	7.90

Sat	05/27/2023	10:42 AM - 03:30 PM	4.80	
Sat	05/27/2023	04:00 PM - 05:04 PM	1.07	5.87
Sun	05/28/2023	08:12 AM - 12:21 PM	4.15	4.15
Tue	05/30/2023	05:59 AM - 10:30 AM	4.52	
Tue	05/30/2023	11:00 AM - 02:26 PM	3.43	7.95
Wed	05/31/2023	09:43 AM - 01:30 PM	3.78	
Wed	05/31/2023	02:00 PM - 06:20 PM	4.33	8.11
Thu	06/01/2023	04:11 AM - 08:30 AM	4.32	
Thu	06/01/2023	09:00 AM - 06:04 PM	9.07	13.39
Fri	06/02/2023	07:13 AM - 11:30 AM	4.28	
Fri	06/02/2023	12:00 PM - 04:37 PM	4.62	8.90
Sat	06/03/2023	05:55 AM - 10:32 AM	4.62	
Sat	06/03/2023	11:03 AM - 02:44 PM	3.68	8.30
Sun	06/04/2023	07:14 AM - 11:45 AM	4.52	
Sun	06/04/2023	12:15 PM - 02:17 PM	2.03	6.55
Tue	06/06/2023	06:45 AM - 11:00 AM	4.25	
Tue	06/06/2023	11:30 AM - 03:36 PM	4.10	8.35
Wed	06/07/2023	09:42 AM - 02:15 PM	4.55	
Wed	06/07/2023	02:45 PM - 05:54 PM	3.15	7.70
Thu	06/08/2023	04:44 AM - 09:00 AM	4.27	
Thu	06/08/2023	09:30 AM - 06:45 PM	9.25	13.52

27. On June 1 and 8, 2023, Plaintiff worked shifts in excess of twelve (12) hours and did not receive either a second meal period and/or a meal period premium in violation of Labor Code §§ 226.7 and 512. Plaintiff alleges that Defendants engaged in the same pattern and practice with respect to all and/or many of the aggrieved employees.

28. At times during their employment, including within the past year and continuing into the present, Defendants also failed to pay Plaintiff and the aggrieved employees meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

29. Further, on the rare occasion, if any, that Defendant paid meal period premiums to Plaintiff or the aggrieved employees, Defendant improperly paid the premium at the employee’s

1 hourly base rate instead of at their regular rate and/or without including all required remuneration
2 including, but not limited to non-discretionary bonuses, incentive payment/pay, shift differentials,
3 hazard pay, piece rate compensation, flat sum production bonuses, non-discretionary production
4 bonuses, attendance bonuses, prevailing wages, any other form of non-discretionary bonus and/or
5 incentive payment and/or a payment under the pay codes “PLA” or “X,” resulting in the
6 underpayment of meal period premiums. Plaintiff contends that Defendant’s policies and
7 practices as alleged above violated Labor Code § 226.7 and seeks penalties pursuant to PAGA
8 related thereto consistent with the California Supreme Court’s decision in *Ferra v. Loews*
9 *Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) (“we hold that the term ‘regular rate of
10 compensation’ in section 226.7(c) has the same meaning of regular rate of pay’ in section 510(a)
11 and encompasses not only hourly wages, but all nondiscretionary payments for work performed
12 by the employee.”).

13 30. Labor Code § 226.7 provides “an employer shall not require an employee to work
14 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
16 Order Nos. 4-2001, 7-2001, and/or other applicable wage statement, an employer must authorize
17 and permit all employees to take ten (10) minute duty free rest periods for every major fraction of
18 four hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269
19 (concluding that “during rest periods employers must relieve employees of all duties and
20 relinquish control over how employees spend their time.”).

21 31. At times during their employment, including within the past year and continuing
22 into the present, Defendants failed to provide Plaintiff with rest periods of not less than ten (10)
23 minutes for every major fraction of four (4) hours worked. Instead, Defendants regularly and
24 consistently required at least some of the aggrieved employees to forgo rest periods and/or
25 required them to remain on the premises and failed to relieve them of all duties. This includes, but
26 is not limited to, failing to advise Plaintiff and the aggrieved employees of their right to take a
27 second rest period when they worked shifts in excess of six (6) hours, but less than eight (8) hours
28 and of their right to a third rest period when they worked more than ten (10) hours. Instead,

1 Defendants regularly and consistently required aggrieved employees to forgo a second rest period
2 when they worked shifts in excess of six (6) hours—including, but not limited to when the
3 aggrieved employees worked shifts in excess of six (6) hours, but less than eight (8) hours—and
4 failed to authorize and permit employees who worked more than ten (10) hours a third rest period.
5 Further, on least some occasions, Defendants failed to provide any rest periods to the aggrieved
6 employees whatsoever including on shifts of all lengths. This includes, but is not limited to, due
7 to Defendants’ failure to advise employees of their right to rest periods on shifts of any length

8 32. During their employment, within the past year, and continuing into the present
9 Plaintiff and the aggrieved employees were denied rest periods as a result of Defendants’
10 understaffing practices and policies. Notably, although Defendants’ rest period policies and
11 practices are not compliant, they also pressured and coerced employees to forgo rest periods and
12 made it difficult for employees to take lawful duty-free rest periods both due to their
13 understaffing policies and practices and otherwise and as discussed above exercised control over
14 them during their rest periods.

15 33. Further, on the rare occasion, if any, that Defendant paid rest period premiums to
16 Plaintiff or the aggrieved employees, Defendant improperly paid the premium at the employee’s
17 hourly base rate instead of at their regular rate and/or without including all required remuneration
18 including, but not limited to non-discretionary bonuses, incentive payment/pay, shift differentials,
19 hazard pay, piece rate compensation, flat sum production bonuses, non-discretionary production
20 bonuses, attendance bonuses, prevailing wages, any other form of non-discretionary bonus and/or
21 incentive payment and/or a payment under the pay codes “PLA” or “X,” resulting in the
22 underpayment of rest period premiums. Plaintiff contends that Defendants’ policies and practices
23 as alleged above violated Labor Code § 226.7 and seeks penalties pursuant to PAGA related
24 thereto consistent with the California Supreme Court’s decision in *Ferra v. Loews Hollywood*
25 *Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) (“we hold that the term ‘regular rate of compensation’ in
26 section 226.7(c) has the same meaning of regular rate of pay’ in section 510(a) and encompasses
27 not only hourly wages, but all nondiscretionary payments for work performed by the employee.”).
28

1 34. As to Plaintiff and the aggrieved employees from May 6, 2023 and continuing into
2 the present, Defendants also failed to provide accurate itemized wage statements in accordance
3 with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly
4 or at the time of each payment to furnish an itemized wage statement in writing showing:

- 5 (1) gross wages earned;
6 (2) total hours worked by the employee;
7 (3) the number of piece-rate units earned and any applicable piece rate if the
8 employee is paid on a piece rate;
9 (4) all deductions, provided that all deductions made on written orders of the employee
10 may be aggregated and shown as one item;
11 (5) net wages earned;
12 (6) the inclusive dates of the period for which the employee is paid;
13 (7) the name of the employee and only the last four digits of his or her social security
14 number or an employee identification number other than a social security number;
15 (8) the name and address of the legal entity that is the employer...;
16 (9) all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee...

18 35. Similarly, Labor Code § 226(e) provides:

19 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
20 employer to comply with subdivision (a) is entitled to recover the greater of all actual
21 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
22 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
23 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
24 award of costs and reasonable attorney's fees.

25 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
26 employer fails to provide a wage statement.

27 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
28 employer fails to provide accurate and complete information as required by any one or
29 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
30 and easily determine from the wage statement alone one or more of the following:

31 (i) The amount of the gross wages or net wages paid to the employee during the
32 pay period or any of the other information required to be provided on the itemized
33 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
34 (a).

35 (ii) Which deductions the employer made from gross wages to determine the net
36 wages paid to the employee during the pay period. Nothing in this subdivision
37 alters the ability of the employer to aggregate deductions consistent with the
38 requirements of item (4) of subdivision (a).

39 (iii) The name and address of the employer and, if the employer is a farm labor
40 contractor, as defined in subdivision (b) of Section 1682, the name and address of
41 the legal entity that secured the services of the employer during the pay period.

42 (iv) The name of the employee and only the last four digits of his or her social
43 security number or an employee identification number other than a social security
44 number.

45 36. As to Plaintiff and the aggrieved employees from May 6, 2023 and continuing into
46 the present, due to Defendants' failure to pay Plaintiff and the aggrieved employees all minimum

1 wages, overtime wages, meal period premiums, rest period premiums, and sick pay, the wage
2 statements issued by Defendants do not indicate the correct amount of gross wages earned, the
3 total hours worked, the net wages earned, all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have
5 violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the aggrieved
6 employees.

7 37. Separate and independent from the foregoing, from May 6, 2023 and continuing
8 into the present, some of the wage statements issued by Defendants to some of the aggrieved
9 employees including but not limited to paper and/or final wage statements, that did not include
10 the name of the employer, the address of the employer, all deductions, the number of piece rate
11 units earned and any applicable piece rate if the employee is paid on a piece rate, the inclusive
12 dates of the period for which the employee is paid (omitted start dates, end dates, and/or both start
13 dates and end dates) the name of the employee and only the last four digits of the employees or
14 the last four digits of the employees social security number (left-off and/or all nine digits of the
15 employees social security number) as well as the non-derivative information for the amount of
16 gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours worked at each hourly rate.
18 This conduct violated Labor Code § 226(a)(1-9)

19 38. From May 6, 2023 and continuing into the present, the wage statements issued to
20 Plaintiff and all aggrieved employees did not include the actual total hours worked by the
21 employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of
22 Section 7(A)(3) of IWC Wage Order Nos. 4-2001, 7-2001, and other applicable wage orders
23 which requires employers to record “when the employee begins and ends each work period.”
24 Instead, Defendants failed to report the time that it knew that Plaintiff and the other aggrieved
25 employees were working while off-the-clock—including but not limited to due to Defendants’
26 policy and practice of impermissibly rounding the time entries associated with meal periods,
27 automatically deducting the time associated with meal periods regardless of whether or not the
28 aggrieved employee received a meal period, and failing to record the time associated with

1 communications with employees (whether by phone call, email, text message, or other method)
2 while off-the-clock about job related issues (including, but not limited to scheduling), as
3 explained in detail above. As a result, the wage statements issued by Defendants did not include
4 the correct amount of total hours worked by Plaintiff and the other aggrieved employees.

5 39. In addition to violating Labor Code § 226(a), Defendants also knowingly and
6 intentionally failed to pay Plaintiff minimum wages, overtime wages, meal period premiums, rest
7 periods premiums, and sick pay, including at the proper rates.

8 40. In addition to violating Labor Code § 226(a), Defendants also knowingly and
9 intentionally failed to include the number of hours worked and rates associated with several
10 categories of pay in violation of Labor Code section 226(a)(9).

11 41. Moreover, Plaintiff also suffered legal “injury” for purposes of Labor Code section
12 226(e) insofar as they were unable to readily and easily determine from the wage statements
13 themselves the information required to be set forth by Section 226(a), the information provided
14 by Defendants were confusing and inaccurate. In addition, Plaintiff was unable to determine at all
15 the total hours worked by the employee, the gross wages earned, the net wages earned, and all
16 applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee for the reasons discussed above.

18 42. Labor Code § 246 requires employer to calculate sick leave pay based upon one of
19 the following formulas:

20 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
21 regular rate of pay for the workweek in which the employee uses paid sick time, whether
22 or not the employee actually works overtime in that workweek.

23 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
24 employee’s total wages, not including overtime premium pay, by the employee’s total
25 hours worked in the full pay periods of the prior 90 days of employment.

26 (3) Paid sick time for exempt employees shall be calculated in the same manner as the
27 employer calculates wages for other forms of paid leave time.

28 Lab. Code § 246.

1 43. Throughout Plaintiff and the aggrieved employees' employment, including within
2 the past year, Defendants failed to include non-discretionary bonuses, incentive payment/pay,
3 shift differentials, hazard pay, piece rate compensation, flat sum production bonuses, non-
4 discretionary production bonuses, prevailing wages, attendance bonuses, any other form of non-
5 discretionary bonus and/or incentive payment and/or a payment under the pay codes "PLA" and
6 "X" when calculating and paying sick pay. *See Wood v. Kaiser Found. Hosps.*, 88 Cal. App. 5th
7 742, 759 (2023), as modified (Mar. 23, 2023). Based upon information and belief, Defendants
8 also refused to allow at least some of their employees to use their protected sick leave on some
9 occasions during the PAGA period in violation of Labor Code §§ 246 and 246.5. Based upon
10 information and belief, Defendants also on some occasions failed to include information about
11 employees' accrued and used sick pay as well as the balance of their sick pay on the aggrieved
12 employee's wage statement.

13 44. As a result when Plaintiff and the Late Payment Aggrieved Employees'
14 employment ended, they left their employment without having received compensation for all of
15 their sick pay that they were owed under Labor Code § 246 and resulting in a violation of Labor
16 Code §§ 201-203. As a result of Defendant's underpayment of sick pay, Plaintiff and the other
17 Late Payment Aggrieved Employees also experienced a violation of Labor Code §§ 201-202 upon
18 separation from Defendant. *See Powell v. Walmart Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S.
19 Dist. LEXIS 20777, at *6 (S.D. Cal. Feb. 2, 2021) (denying a motion to dismiss claims under
20 Labor Code section 203 based upon the employer's alleged failure to include incentive pay when
21 calculating and paying sick pay); *accord Flores v. Dart Container Corp.*, No. 2:19-cv-00083
22 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at *7 (E.D. Cal. May 27, 2020).

23 45. As described in detail above, Defendants failed to pay Plaintiff and the aggrieved
24 employees all minimum wages, all overtime wages, meal period premiums, rest period premiums,
25 and sick pay for the reasons discussed above, within the time constraints of Labor Code §§ 201-
26 202 upon the conclusion of their employment.

27 46. Under Labor Code §§ 201-202, an employer must provide an employee wages at
28 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §

203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, 68 Cal.App.4th 487, 492 (1998).

47. Separate and independent of the foregoing, Defendants also failed to pay Plaintiff, and the aggrieved employees all of their final wages at the time of their termination, at the time of their last day if they gave more than three (3) days’ advance notice, or within 72 hours of a resignation without notice as required by Labor Code §§ 201 and 202. Thus, as result of Defendants’ faulty policies described above, Plaintiff and the aggrieved employees whose employment ended left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

48. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(a), “Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code § 204 also expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved employees on a semi-monthly basis.

49. Due to Defendant’s failure to pay Plaintiff and all aggrieved employees all minimum wages, all overtime wages (including doubletime wages), meal period premiums, rest period premiums, sick pay wages (including at the proper rate) and reporting time pay for the reasons discussed above, Defendant failed to timely pay Plaintiff and all aggrieved employees all wages owed within the time constraints of Labor Code § 204 on a regular and consistent basis.

50. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For

1 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
2 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
3 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
4 the faulty compensation policies and practices described in detail above, Plaintiff and the other
5 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
6 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
7 Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
8 at the proper rate in accordance with a local wage ordinance).

9 51. Labor Code § 1174 provides that each employer shall keep “payroll records
10 showing the hours worked daily by and the wages paid to...employees employed
11 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
12 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

13 52. As previously explained, Defendants failed to maintain accurate records of the
14 total hours worked by employees or of the time associated with off-the-clock work as described
15 above and failed to record time that employees were subject to Defendants’ control and required
16 to work during their meal/rest periods on a regular and consistent basis in express violation of
17 Section 7(A)(3) of IWC Wage Order Nos. 4-2001, 7-2001, or other applicable wage order which
18 require employers to record “when the employee begins and ends each work period.”:

19 53. Due to Defendants’ regular and consistent practice of not recording all hours
20 worked, including the time associated with off-the-clock work and as described above, the time
21 records maintained by Defendant do not show the actual hours worked daily by Plaintiff and the
22 aggrieved employees. This caused Plaintiff and the other aggrieved employees time records not to
23 actually show the total hours worked daily by each of them throughout the PAGA period in
24 violation of Labor Code §§ 1174 and 1174.5.

25 54. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
26 Agency (“LWDA”) on May 6, 2024 and sent a letter by certified mail to Defendants that same
27 day setting forth the facts and theories of the violations alleged against Defendants, as prescribed
28 by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee to

1 the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have
2 been received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-
3 five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to
4 proceed with a civil action pursuant to Labor Code § 2699.

5 **II.**

6 **JURISDICTION AND VENUE**

7 55. This Court has subject matter jurisdiction over all causes of action asserted herein
8 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
9 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
10 exclusive of interest, exceeds \$35,000, and because each cause of action asserted arises under the
11 laws of the State of California or is subject to adjudication in the courts of the State of California.

12 56. This Court has personal jurisdiction over Defendant WRIGHT CELEBRATIONS,
13 INC. because Defendant has caused injuries in the County of Placer, and State of California
14 through their acts, and by their violation of the California Labor Code and California law in
15 Placer County and Defendant's principal place of business is 8845 WASHINGTON BLVD,
16 SUITE 140, ROSEVILLE, CA 95678.

17 57. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
18 Civil Procedure §395. Defendants operates within California and do business within Placer
19 County and Defendant WRIGHT CELEBRATIONS, INC. is headquartered in Placer County.
20 The unlawful acts alleged herein have a direct effect on Plaintiff and the aggrieved employees
21 within the State of California and the County of Placer.

22 58. This case should be classified as complex according to Rule 3.400 of the
23 California Rules of Court, as it will involve substantial documentary evidence, and is likely to
24 involve extensive motion practice raising difficult or novel issues that will be time-consuming to
25 resolve and would require substantial post judgment judicial supervision.

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III.
PARTIES

A. PLAINTIFF

59. Plaintiff EDUARDO JUAREZ is a former employee of Defendants who worked for Defendants in California.

B. DEFENDANTS

60. Defendant WRIGHT CELEBRATIONS, INC. is a California Corporation whose principal place of business is 4080 Campbell Ave Menlo Park, CA 94025 in Placer County. Defendant has done and does business throughout the State of California and in Placer County.

61. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

62. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, are alter egos of Defendants, operated as a single integrated enterprise with Defendants, were joint employers and/or joint venturers with Defendants, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the aggrieved employees and/or as alter egos of each other.

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IV.
FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§
1194 and 1194.2 AND IWC WAGE ORDER NOS. 4-2001 AND 7-2001
[Against All Defendants by Plaintiff]

63. Plaintiff realleges and incorporates by reference all previous paragraphs.

64. Section 1194 of the Labor Code provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than minimum wage...applicable to the employee is entitle to recover in a civil action the unpaid balance of the full amount of this minimum wage ..., including interest thereon, reasonable attorney’s fees, and costs of suit.

65. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under...Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

66. As set forth above, during statutory period applicable to the claims in this action, including within the past year, and continuing into the present, Plaintiff was not compensated for all hours worked as a result of Defendants’ policies and practices described in detail above.

67. In failing to pay Plaintiff for all hours worked, for the reasons described above, Defendants willfully and intentionally violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code, Plaintiff is entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the claim period.

V.
SECOND CAUSE OF ACTION
FAILURE TO PAY WAGES AND/OR OVERTIME UNDER
LABOR CODE §§ 510, 1194, and 1199
[Against All Defendants by Plaintiff]

68. Plaintiff realleges and incorporates by reference all previous paragraphs.

69. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight

1 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
2 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
3 employees at no less than twice the regular rate of pay when an employee works more than
4 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
5 In accordance with Labor Code § 1194, Plaintiff could not agree to work for a lesser wage.

6 70. In addition, Labor Code § 1197 states the California requirement that employees
7 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
8 local law, and any payment of less than the minimum wage is unlawful.

9 71. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
10 standard conditions of labor fixed by the commission shall be the maximum hours of work and
11 the standard conditions of labor for employees. The employment of any employee for longer
12 hours than those fixed by the order or under conditions of labor prohibited by the order is
13 unlawful.”

14 72. As discussed in detail above, at times within the past four (4) years, Defendants
15 failed to pay Plaintiff wages for all hours worked (including overtime hours) and failed to pay
16 overtime wages at the proper rate.

17 73. Based upon information and belief, at times within the past four (4) years,
18 Defendants failed to pay Plaintiff at one and one-half times their regular rate and instead
19 underpaid their overtime wages or two (2) times his regular rate for hours worked in excess of
20 (12).

21 74. Based upon information and belief, at times within the past four (4) years,
22 Defendants also failed to pay Plaintiff for the first eight (8) hours worked on the seventh
23 consecutive day no less than one and one-half times the regular rate of pay or twice his regular
24 rate when he worked more than eight (8) hours in a day a seventh consecutive day of work.

25 75. Defendants conduct, as described above was willful.

26 76. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
27 wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such
28 amounts, plus interest and penalties thereon, attorneys’ fees, and costs.

VI.
THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE
§§ 226.7 and 512; IWC WAGE ORDER NOS. 4-2001 AND 7-2001
[Against All Defendants by Plaintiff,]

77. Plaintiff realleges and incorporates by reference all previous paragraphs.

78. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each non-compliant meal period an employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours and cannot waive their second meal period if they work a shift in excess of twelve (12) hours.

79. At points between four (4) years prior to the filing of the Complaint, Plaintiff worked shifts over six (6) hours and did not receive timely first meal periods within the first five (5) hours of their shifts.

80. At times within the past four (4) years, Defendants failed to authorize and permit Plaintiff to receive lawful meal periods, failed to advise him of his right to such meal periods, failed to authorize and permit him to take timely first meal periods, failed to authorize and permit him to take second meal periods, rounded the time entries associated with meal periods, failed to authorize and permit him to take 30-minute meal periods on occasion, failed to relieve him of all duties during their meal periods, improperly rounded meal periods, and interrupted meal periods and, based upon information and belief, and/or through their staffing and other policies encouraged its customers to interrupt Plaintiff's meal periods.

81. At times within the past four (4) years, Defendants also failed to authorize and permit Plaintiff to receive lawful second meal periods when they worked more shifts in excess of ten (10) hours per day and/or twelve (12) hours in a day. This includes, but is not limited to, failing to advise Plaintiff of his right to take a second thirty (30) meal period on such shifts and/or that they could not waive their second meal period if they worked a shift in excess of (12) hours.

82. At times within the past four (4) years, Defendants' meal period policies and practices also disincentivized and discouraged Plaintiff from taking timely first meal periods

within the first five (5) hours of their shift, thirty (30) minute meal periods, and/or second meal periods. Defendants' understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and/or forgo meal periods due to a lack of sufficient coverage and receive interrupted meal periods.

83. For instance, on September 22, 2023, Plaintiff worked at least 7.33 hours without receiving a first meal period and did not receive a second meal period even though he worked more than 12 hours:

Fri	09/22/2023	06:10 AM - 01:30 PM	7.33		000000
Fri	09/22/2023	02:00 PM - 07:04 PM	5.07		000000
Fri	09/22/2023	07:04 PM - 08:04 PM	1.00	13.40 PDLCHAWD	000000

84. Similarly, on September 26, 2023, December 11, 2023, and December 12, 2023, Plaintiff worked shifts in excess of ten (10) and/or twelve (12) hours in length, but was not authorized and permitted nor did he receive a second meal period.

Tue	09/26/2023	07:11 AM - 11:30 AM	4.32		000000	TENTI
Tue	09/26/2023	12:00 PM - 06:09 PM	6.15	10.47	000000	TENTI

Mon	12/11/2023	04:43 AM - 08:45 AM	4.03		
Mon	12/11/2023	09:15 AM - 06:18 PM	9.05	13.08	
Tue	12/12/2023	04:41 AM - 10:30 AM	5.82		
Tue	12/12/2023	11:00 AM - 07:00 PM	8.00		
Tue	12/12/2023	07:00 PM - 08:00 PM	1.00	14.82 PDLCHAWD	

85. At times within the past four (4) years, Defendants' meal period policies and practices disincentivized and discouraged Plaintiff from taking lawful meal periods due to issues related to understaffing, customer demands, and job assignments. As a result of Defendants' understaffing practices and policies, it was often not possible for Plaintiff to take meal periods and/or timely meal periods within the first five (5) hours of their shift and/or thirty (30) minutes in length. Notably, although Defendant's meal period policies and practices are not compliant, it also pressured and coerced employees to forgo meal periods and made it difficult for employees to take lawful duty-free meal periods. Defendant's understaffing policies and practices also pressured, coerced, and forced employees, including Plaintiff, to take untimely first meal periods

1 and/or forced to forgo first and/or second meal periods (including, but not limited to, on shifts
2 worked in excess of 12 hours).

3 86. At times within the past four (4) years, Defendants further violated Labor Code §
4 512 by failing to authorize timely meal periods within the first (5) hours of an employees' shift.
5 Defendants' maintained a policy and practice of requiring Plaintiff to waive first meal periods
6 when working shifts of less than six (6) hours. In doing so, Defendants pressured and
7 disincentivized employees from taking meal periods within the first five (5) hours of their shift.
8 As employees did not know in advance whether or not they would work more than six (6) hours
9 and were not permitted to take meal periods and/or discouraged from taking meal periods on
10 shifts of less than six hours, Plaintiff was not offered the opportunity to take a meal period within
11 the first five (5) hours of his shift.

12 87. At times within the past four (4) years, Defendants also sometimes actively
13 interfered with Plaintiff's right to receive lawful meal periods including, Plaintiff's meal periods
14 were also interrupted by his supervisors and other managers, customers, and/or by people asking
15 them questions and by Defendants and its supervisory/managerial employees requiring and/or
16 suffering or permitting them to perform work while they were supposed to be on their meal
17 period (including when they were clocked-out).

18 88. At times within the past four (4) years, Defendants also failed to provide Plaintiff
19 with uninterrupted meal periods of at least thirty (30) minutes in length, including but not limited
20 due to its policy and practice of rounding the time entries associated with meal periods,
21 understaffing conditions, and the job demands of Plaintiff. Such practices sometimes made it
22 impossible for Plaintiff to take thirty (30) minute uninterrupted meal periods on some occasions.

23 89. At times within the past four (4) years, Defendant also engaged in a common
24 pattern and practice of rounding meal period punches in violation of Labor Code sections 1194,
25 510, 512, and 226.7. As the California Supreme Court held in *Donohue v. Amn Servs.*, 11 Cal.5th
26 58, 81 (2021) employers cannot engage in the practice of rounding time punches—that is,
27 adjusting the hours that an employee has actually worked to the nearest present time increment—
28 in the meal period context. Here, as in *Donohue*, Defendants engaged in a common policy and

practice of rounding Plaintiff's time punches such that he did not receive minimum wages for all hours worked, overtime wages for the improperly rounded time punches, did not receive meal period premiums for rounded time punches, and/or proper and lengthy meal periods. This includes, but is not limited to due to failing to record the actual time that Plaintiff clocked-out for meal periods. For instance, Plaintiff's time records often showed that he took a meal period at some point during a several hour period of always exactly 30 minutes in length regardless of the actual amount of time associated with meal periods due to Defendants' unlawful rounding policy as evidenced below:

Sat	09/16/2023	07:13 AM - 11:45 AM	4.53	
Sat	09/16/2023	12:15 PM - 06:34 PM	6.32	10.85
Sun	09/17/2023	05:40 AM - 10:00 AM	4.33	
Sun	09/17/2023	10:30 AM - 12:20 PM	1.83	
Sun	09/17/2023	12:20 PM - 02:45 PM	2.42	Drive Time
Sun	09/17/2023	02:45 PM - 02:53 PM	0.13	8.71
Mon	09/18/2023	08:40 AM - 01:00 PM	4.33	
Mon	09/18/2023	01:30 PM - 06:25 PM	4.92	9.25
Tue	09/19/2023	08:12 AM - 12:30 PM	4.30	
Tue	09/19/2023	01:00 PM - 03:01 PM	2.02	6.32
Thu	09/21/2023	07:44 AM - 12:00 PM	4.27	
Thu	09/21/2023	12:30 PM - 04:08 PM	3.63	7.90
Fri	09/22/2023	06:10 AM - 01:30 PM	7.33	
Fri	09/22/2023	02:00 PM - 07:04 PM	5.07	
Fri	09/22/2023	07:04 PM - 08:04 PM	1.00	13.40 PDLCHAWD
Sat	09/23/2023	05:27 AM - 09:30 AM	4.05	
Sat	09/23/2023	10:00 AM - 11:25 AM	1.42	5.47
Sun	09/24/2023	06:10 AM - 10:30 AM	4.33	
Sun	09/24/2023	11:00 AM - 03:25 PM	4.42	8.75
Mon	09/25/2023	07:12 AM - 11:30 AM	4.30	
Mon	09/25/2023	12:00 PM - 04:54 PM	4.90	9.20

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Sat	05/27/2023	10:42 AM - 03:30 PM	4.80	
Sat	05/27/2023	04:00 PM - 05:04 PM	1.07	5.87
Sun	05/28/2023	08:12 AM - 12:21 PM	4.15	4.15
Tue	05/30/2023	05:59 AM - 10:30 AM	4.52	
Tue	05/30/2023	11:00 AM - 02:26 PM	3.43	7.95
Wed	05/31/2023	09:43 AM - 01:30 PM	3.78	
Wed	05/31/2023	02:00 PM - 06:20 PM	4.33	8.11
Thu	06/01/2023	04:11 AM - 08:30 AM	4.32	
Thu	06/01/2023	09:00 AM - 06:04 PM	9.07	13.39
Fri	06/02/2023	07:13 AM - 11:30 AM	4.28	
Fri	06/02/2023	12:00 PM - 04:37 PM	4.62	8.90
Sat	06/03/2023	05:55 AM - 10:32 AM	4.62	
Sat	06/03/2023	11:03 AM - 02:44 PM	3.68	8.30
Sun	06/04/2023	07:14 AM - 11:45 AM	4.52	
Sun	06/04/2023	12:15 PM - 02:17 PM	2.03	6.55
Tue	06/06/2023	06:45 AM - 11:00 AM	4.25	
Tue	06/06/2023	11:30 AM - 03:36 PM	4.10	8.35
Wed	06/07/2023	09:42 AM - 02:15 PM	4.55	
Wed	06/07/2023	02:45 PM - 05:54 PM	3.15	7.70
Thu	06/08/2023	04:44 AM - 09:00 AM	4.27	
Thu	06/08/2023	09:30 AM - 06:45 PM	9.25	13.52

90. On June 1 and 8, 2023, Plaintiff worked shifts in excess of twelve (12) hours and did not receive either a second meal period and/or a meal period premium in violation of Labor Code §§ 226.7 and 512.

91. At times within the past four (4) years, Defendants also failed to pay Plaintiff meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

92. Further, on the rare occasion, if any, that Defendant paid meal period premiums to Plaintiff, Defendant improperly paid the premium at the his hourly base rate instead of at his regular rate and/or without including all required remuneration including, but not limited to non-

1 discretionary bonuses, incentive payment/pay, shift differentials, hazard pay, piece rate
2 compensation, flat sum production bonuses, non-discretionary production bonuses, attendance
3 bonuses, prevailing wages, any other form of non-discretionary bonus and/or incentive payment
4 and/or a payment under the pay codes “PLA” or “X,” resulting in the underpayment of meal
5 period premiums. Plaintiff contends that Defendants’ policies and practices as alleged above
6 violated Labor Code § 226.7 and seeks penalties pursuant to PAGA related thereto consistent
7 with the California Supreme Court’s decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.
8 5th 858, 878 (2021) (“we hold that the term ‘regular rate of compensation’ in section 226.7(c) has
9 the same meaning of regular rate of pay’ in section 510(a) and encompasses not only hourly
10 wages, but all nondiscretionary payments for work performed by the employee.”).

11 93. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount equal
12 to one (1) hour of wages per non-compliant meal break, per day in a sum to be proven at trial.

13 **VII.**
14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT**
16 **REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE**
17 **ORDER NOS. 4-2001 AND 7-2001, § 12**
18 **[Against All Defendants by Plaintiff]**

19 94. Plaintiff realleges and incorporates by reference all previous paragraphs.

20 95. Labor Code § 226.7 provides “an employer shall not require an employee to work
21 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
22 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
23 Order Nos. 4-2001 and 7-2001 an employer must authorize and permit all employees to take ten
24 (10) minute duty free rest periods for every major fraction of four hours worked.

25 96. At times within the past four (4) years, Defendants failed to provide Plaintiff with
26 rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked in
27 violation of Labor Code § 226.7 and IWC Wage Order Nos. 4-2001, 7-2001, and/or other
28 applicable wage orders. Instead, Defendants regularly and consistently failed to authorize and
permit rest periods, failed to inform Plaintiff of his right to rest periods, required Plaintiff to forgo
rest periods and/or failed to relieve him of all duties (including by interrupting any rest periods).

1 97. At times within the past four (4) years, Plaintiff was also denied rest periods as a
2 result of Defendants' understaffing practices and policies. Notably, although Defendants' rest
3 period policies and practices are not compliant, they also pressured and coerced employees to
4 forgo rest periods and made it difficult for employees to take lawful duty-free rest periods both
5 due to their understaffing policies and practices and otherwise.

6 98. In addition to failing to authorize and permit compliant rest periods, Plaintiff, was
7 not compensated with one (1) hours' worth of pay at their regular rate of compensation when they
8 were not provided with a compliant rest period and/or their rest period was interrupted and/or
9 they did not receive a lawful rest period in accordance with Labor Code § 226.7(b).

10 99. Further, on the rare occasion, if any, that Defendant paid rest period premiums to
11 Plaintiff, Defendant improperly paid the premium at the Plaintiff's hourly base rate instead of at
12 their regular rate and/or without including all required remuneration including, but not limited to
13 non-discretionary bonuses, incentive payment/pay, shift differentials, non-discretionary
14 production bonuses, attendance bonuses, prevailing wages, any other form of non-discretionary
15 bonus and/or incentive payment and/or a payment under the pay codes "PLA" or "X," resulting in
16 the underpayment of rest period premiums. Plaintiff contends that Defendants' policies and
17 practices as alleged above violated Labor Code § 226.7 and seeks penalties pursuant to PAGA
18 related thereto consistent with the California Supreme Court's decision in *Ferra v. Loews*
19 *Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("we hold that the term 'regular rate of
20 compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a)
21 and encompasses not only hourly wages, but all nondiscretionary payments for work performed
22 by the employee.").

23 100. Based upon the foregoing, at all times pertinent hereto, Defendants failed to
24 authorize and permit Plaintiff to take duty-free rest periods of not less than ten (10) minutes net
25 for every major fraction of four (4) hours worked.

26 101. Pursuant to Labor Code § 226.7, Plaintiff is entitled to damages in an amount
27 equal to one (1) hour of wages per non-compliant rest period, in a sum to be proven at trial.

28 ///

VIII.
FIFTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 226(e)
[Against all Defendants on behalf of Plaintiff]

102. Plaintiff realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

103. From one (1) year prior to the filing of the Complaint, Defendants failed to provide Plaintiff with accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) 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;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

104. Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.
(iv) 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.

105. From one (1) year prior to the filing of the Complaint until the receipt of Plaintiff's final wage statement, the wage statements issued by Defendants did not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate due to Defendants' failure to pay Plaintiff all minimum wages, overtime wages, meal period premiums, rest period premiums, and sick pay. Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9).

106. From one (1) year prior to the filing of the Complaint until the receipt of Plaintiff's final wage statement, the wage statements issued to Plaintiff by Defendants did not include the actual total hours worked by the employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order Nos. 4-2001, 7-2001, and other applicable wage orders which requires employers to record "when the employee begins and ends each work period." Instead, Defendants failed to report the time that it knew that Plaintiff was working while off-the-clock—including but not limited to due to Defendants' policy and practice of impermissibly rounding the time entries associated with meal periods, automatically deducting the time associated with meal periods regardless of whether or not the Plaintiff received a meal period, and failing to record the time associated with communications with employees (whether by phone call, email, text message, or other method) while off-the-clock about job related issues (including, but not limited to scheduling), as explained in detail above. As a result, the wage statements issued by Defendants did not include the correct amount of total hours worked by Plaintiff.

107. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff minimum wages, overtime wages, meal period premiums, rest periods premiums, and sick pay, including at the proper rates.

1 108. In addition to violating Labor Code § 226(a), Defendants also knowingly and
2 intentionally failed to include the number of hours worked and rates associated with several
3 categories of pay in violation of Labor Code section 226(a)(9).

4 109. Moreover, Plaintiff also suffered legal “injury” for purposes of Labor Code section
5 226(e) insofar as they were unable to readily and easily determine from the wage statements
6 themselves the information required to be set forth by Section 226(a), the information provided
7 by Defendants were confusing and inaccurate. In addition, Plaintiff was unable to determine at all
8 the total hours worked by the employee, the gross wages earned, the net wages earned, and all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate by the employee for the reasons discussed above.

11 110. In addition to violating Labor Code § 226(a), Defendants also knowingly and
12 intentionally failed to pay Plaintiff all minimum wages, overtime wages, meal period premiums,
13 rest periods premiums, and sick pay including at the proper rates.

14 111. In addition to violating Labor Code § 226(a), Defendants also knowingly and
15 intentionally failed to include the number of hours worked and rates associated with several
16 categories of pay in violation of Labor Code section 226(a)(9).

17 112. Moreover, Plaintiff also suffered legal “injury” for purposes of Labor Code section
18 226(e) insofar as they were unable to readily and easily determine from the wage statements
19 themselves the information required to be set forth by Section 226(a), the information provided
20 by Defendants were confusing and inaccurate. In addition, Plaintiff was unable to determine at all
21 the total hours worked by the employee, the gross wages earned, the net wages earned, and all
22 applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate by the employee for the reasons discussed above.

24 113. Moreover, Defendants undeniably knew when paying that the wage statements it
25 issued did not include and/or accurately list, the gross wages earned, the net wages earned, and all
26 applicable hourly rates in effect during the pay period and the corresponding number of hours
27 worked at each hourly rate by the employee for the reasons discussed above.

114. Defendants also failed to both comply with and create a policy that complied with Labor Code § 226 prior to the filing of this lawsuit and having been previously sued for violating Labor Code section 226. Labor Code § 226(e)(3) provides that when determining whether or not an employer's violation of Labor Code § 226(a) was knowing and intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section." Accordingly, Defendants' conduct was knowing and intentional within the meaning of Labor Code § 226(e).

115. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff seeks penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

IX.
SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff]

116. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

117. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to former employees during the actionable period for this cause of action, at or around the time that their employment is terminated.

118. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

119. As described in detail above, Defendants failed to pay Plaintiff all wages owed, including but not limited to all minimum wages, overtime wages, meal period premiums, rest

1 period premiums and sick pay within the time constraints proscribed in Labor Code §§ 201-202 at
2 the time of his termination/separation. Thus, as result of Defendants' faulty policies described
3 above, Plaintiff left his employment with Defendants without being compensated for each and
4 every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

5 120. Separate and independent of the foregoing, Defendants also failed to pay Plaintiff
6 all of his final wages at the time of their termination, at the time of their last day if they gave
7 more than three (3) days' advance notice, or within 72 hours of a resignation without notice as
8 required by Labor Code §§ 201 and 202. Specifically, based upon information and belief,
9 Defendants terminated Plaintiff in or around March 4, 2024. However, although Defendants still
10 have not paid Plaintiff all wages owed for the reasons discussed above, Defendants also failed to
11 pay Plaintiff any of his final wages until March 8, 2024. Thus, as result of Defendants' faulty
12 policies described above, Plaintiff left his employment with Defendants without being
13 compensated for each and every hour worked at the appropriate rate in violation of Labor Code
14 §§ 201, 202, and 203.

15 121. At the time of Plaintiff, the separation from Defendants, the sums owed to Plaintiff
16 were certain and known to Defendants.

17 122. As a result, Defendants are liable to Plaintiff for waiting time penalties amounting
18 to thirty (30) days wages for Plaintiff pursuant to California Labor Code § 203. See, e.g., DLSE
19 Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to
20 recover waiting time penalties).

21 **X.**
SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff]

22 123. Plaintiff, realleges and incorporates by reference all previous paragraphs.

23 124. Plaintiff, on behalf of the general public brings this claim pursuant to Business &
24 Professions Code § 17200, *et seq.* The conduct of Defendants as alleged in this Complaint has
25 been and continues to be unfair, unlawful, and harmful to Plaintiff and the general public.
26 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code
27
28

1 of Civil Procedure § 1021.5. Plaintiff is a “person” within the meaning of Business & Professions
2 Code § 17204, and therefore has standing to bring this cause of action for injunctive relief,
3 restitution, and other appropriate equitable relief.

4 125. Defendants have engaged in unlawful and unfair business practices that violate
5 fundamental public policies of the state of California. As a result of its unlawful and unfair
6 business practices, Defendants have forced employees, including Plaintiff, to work under
7 substandard and unlawful conditions in an effort to gain a competitive advantage over law-
8 abiding employers who comply with California’s Labor Code.

9 126. Defendants have violated statutes and public policies as alleged herein. Through
10 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
11 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
12 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
13 Plaintiff of rights, benefits, and privileges guaranteed to all employees under law. Defendants
14 failure to adhere to the California Labor Code has provided it with an unfair competitive
15 advantage over its competitors.

16 127. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
17 violation of § 17200 et seq. of the Business & Professions Code.

18 128. Defendants, by engaging in the conduct herein alleged, either knew or in the
19 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
20 violation of § 17200 et seq. of the Business & Professions Code.

21 129. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, other
22 businesses, and the general public have been damaged in a sum as may be proven.

23 130. As part of their claims against Defendant, Plaintiffs seek not only the unpaid
24 wages, but also the market value of the loss of the statutory protections and the cost to other
25 employers of providing proper pay, breaks, and complying with the California Labor Code
26 provisions identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162
27 (2015).

131. Unless restrained, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, as may be necessary to prevent the use or employment by Defendants, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff the money Defendants have unlawfully failed to pay and Defendants' competitors for the additional costs associated with complying with California's Labor Code.

XI.
EIGHTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 203, 204, 206.5, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512,
558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2810.5, and IWC Wage
Order Nos. 4-2001, 7-2001, or Other Applicable Wage Order
[Against all Defendants on behalf of Plaintiff and the Aggrieved Employees Pursuant to
PAGA]

132. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

133. Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will be received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

134. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2810.5, and IWC Wage Order Nos. 4-2001, 7-2001, or other applicable Wage Order.

1 135. There is currently a split of authority regarding which PAGA penalties apply to
2 violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355
3 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific*
4 *Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to
5 a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates
6 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
7 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
8 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
9 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
10 of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other
11 aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it
12 applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or
13 2699 penalties for Defendant’s violations of Labor Code § 226(a).

14 136. Labor Code § 210 provides that “in addition to, an entirely independent and apart
15 from, any other penalty provided in this article, every person who fails to pay the wages of each
16 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
17 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
18 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
19 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

20 137. As a result of the faulty compensation policies and practices described in detail
21 above, the State of California is entitled to recover penalties under Labor Code § 210 through
22 PAGA.

23 138. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
24 causes to be violated...any provision regulating hours and days of work in any order of the
25 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
26 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
27 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
28 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay

1 period for which the employee was underpaid...” Based upon the above factual allegations
2 related to overtime violations, Plaintiff and the aggrieved employees are entitled to recover civil
3 penalties under Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup.*
4 *Ct. 8 Cal.5th 175* (2019).

5 139. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
6 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
7 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
8 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
9 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
10 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
11 period for which the employee is underpaid regardless of whether the initial violation is
12 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
13 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
14 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
15 penalties for violations of Labor Code § 1197.1.

16 140. Labor Code § 256 serves as the civil default penalty for a violation of Labor Code
17 section 203 under PAGA and provides for “a civil penalty in an amount not exceeding 30 days’
18 pay as waiting time under the terms of Section 203. *See Iskanian v. CLS Transportation Los*
19 *Angeles, LLC*, 59 Cal.4th 348, 381 (2014); *see also Esparza v. KS Industries, L.P.* 13 Cal.App.5th
20 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer’s
21 failure to timely pay wages upon separation was willful is a “civil penalty”). To the extent
22 permitted by law Plaintiff seeks Labor Code § 2699.3 penalties at either the default amount or the
23 amount proscribed by Labor Code § 256 for Defendant’s violations of Labor Code §§ 201 and
24 202.

25 141. As described in detail above, Defendants willfully failed to pay Plaintiff and other
26 aggrieved employees whose employment concluded all wages owed, including but not limited to
27 overtime wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of
28 their termination/separation. Thus, as result of Defendants’ faulty policies described above,

1 Plaintiff and all aggrieved employees left their employment with Defendants without being
2 compensated for each and every hour worked at the appropriate rate in violation of Labor Code
3 §§ 201, 202, 203, and 256.

4 142. Labor Code §2802 provides that “[a]n employer shall indemnify his or her
5 employee for all necessary expenditures or losses incurred by the employee in direct consequence
6 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
7 even though unlawful, unless the employee, at the time of obeying the directions, believed them
8 to be unlawful.”

9 143. During at least part of the PAGA period, Defendant required and/or expected
10 aggrieved employees to use their own tools and implements in the discharge of their job duties.
11 By failing to provide Plaintiff and the aggrieved employees with all necessary implements and
12 tools, Defendant caused Plaintiff and the other aggrieved employees to make expenditures and
13 incur losses in the direct consequence of the discharge of their job duties. Moreover, Defendant
14 also expected aggrieved employees to use their personal vehicles on occasion for business
15 purposes and for which they did not receive reimbursement. During at least part of the PAGA
16 period, Defendant also required some of the aggrieved employees to utilize their cell phones or
17 other electronic devices in the discharge of their job duties for which they did not receive
18 reimbursement and/or sufficient reimbursement. On the occasions where Defendant did provide
19 reimbursement, Defendant provided an insufficient flat sum amount not tied in any way or
20 appreciable manner to the amount of communications received and/or the costs incurred by the
21 employees. Defendant’s conduct in requiring some of the aggrieved employees to engage in the
22 above-described activities caused them to incur losses as a direct consequence of their duties.
23 Although some of the aggrieved employees were regularly required to and/or ordered/directed to
24 use their own personal communication devices for work purposes (including cell phones and
25 other devices), those aggrieved employees were not provided with any and/or adequate
26 reimbursement for the use of their personal cell phones. Based upon information and belief, some
27 of the aggrieved employees were specifically directed by Defendant and/or its supervisory
28 employees to utilize their cell phones in the discharge of their job duties for which they did not

1 receive compensation. Defendant's conduct in requiring some of the aggrieved employees to
2 engage in the above-described activities caused them to incur losses as a direct consequence of
3 their duties.

4 144. Labor Code § 206.5 states that:

5 (a) An employer shall not require the execution of a release of a claim or right on account
6 of wages due, or to become due, or made as an advance on wages to be earned, unless
7 payment of those wages has been made. A release required or executed in violation of the
8 provisions of this section shall be null and void as between the employer and the
employee. Violation of this section by the employer is a misdemeanor.

9 (b) For purposes of this section, execution of a release includes requiring an employee, as
10 a condition of being paid, to execute a statement of the hours he or she worked during a
11 pay period which the employer knows to be false.

12 145. At times during the PAGA period, Defendant required aggrieved employees to
13 execute a release as a condition of being paid in the form of a statement of hours that he or she
14 worked during the pay period that Defendant and/or some of its agents knew to be false,
15 incomplete, and/or inaccurate. Such conduct violated Labor Code § 206.5.

16 146. Labor Code § 2810.5 requires an employer to provide, at the time of hiring,
17 to each employee a "written notice, in the language the employer normally uses to communicate
18 employment-related information to the employee, containing the following information:

19 (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,
20 salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

21 (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging
allowances.

22 (C) The regular payday designated by the employer in accordance with the requirements of
this code.

23 (D) The name of the employer, including any "doing business as" names used by the
employer.

24 (E) The physical address of the employer's main office or principal place of business, and a
mailing address, if different.

25 (F) The telephone number of the employer.

26 (G) The name, address, and telephone number of the employer's workers' compensation
insurance carrier.

27 (H) That an employee: may accrue and use sick leave; has a right to request and use
accrued paid sick leave; may not be terminated or retaliated against for using or requesting
the use of accrued paid sick leave; and has the right to file a complaint against an employer
who retaliates.

28 (I) Any other information the Labor Commissioner deems material and necessary.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid minimum wages not paid to Plaintiff as may be proven;
2. For liquidated damages in an amount equal to the wages unlawfully unpaid wages pursuant to Labor Code § 1194.2.
3. For compensatory damages in the amount of unpaid overtime wages (including doubletime wages) not paid to Plaintiff as may be proven;
4. For compensatory damages in the amount of Plaintiff's unpaid and/or underpaid meal period premiums as may be proven;
5. For compensatory damages in the amount of Plaintiff's unpaid and/or underpaid rest period premiums as may be proven;
6. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized wage statements issued to Plaintiff from one (1) year prior to the filing of the Complaint as may be proven;
7. An award to Plaintiff of waiting time penalties in the amount of up to 30 days' wages;
8. For restitution for unfair competition pursuant to Business & Professions Code § 17200 to Plaintiff and the general public for actions, including disgorgement of profits, in an amount as may be proven;
9. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2810.5, and IWC Wage Order Nos. 4-2001, 7-2001, or other applicable Wage Order;

- 1 10. A declaratory judgment that Defendants' violated the Labor Code as set forth
2 herein;
3 11. An award of pre-judgment and post judgment interest;
4 12. An award providing for payment of costs of suit;
5 13. An award of attorneys' fees, including, but not limited to, pursuant to Labor Code
6 §§ 226, 218.5, 2698; and
7 14. Such other and further relief as this Court may deem proper and just.
8

9 DATED: July 11, 2024

WINSTON LAW GROUP, P.C.

11 By: David Winston
12 DAVID S. WINSTON
13 Attorneys for Plaintiff and the aggrieved
14 employees
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