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on behalf of himself and others similarly situated

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

08/26/2024

Clerk of the Court

BY: WILLIAM TRUPEK

Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

KEVIN ROSE, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

DAYLIGHT FOODS, INC., a California
corporation; GRUBMARKET, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: CGC-24-615770

CLASS ACTION

Assigned for All Purposes To:

Hon. Andrew S. Cheng

Dept.: 613

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Under Labor Code § 510;
3. Failure to Comply with Labor Code § 245 *et seq.* and 246;
4. Meal Period Liability Under Labor Code § 226.7;
5. Rest-Break Liability Under Labor Code § 226.7;
6. Failure to Provide Accurate Wage Statements Under Labor Code § 226(a);
7. Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5;
8. Failure to Timely Pay Wages Upon Termination Under Labor Code § 203;
9. Failure to Reimburse Necessary Business Expenses § 2802;
10. Violation of B & P Code § 17200 *et seq.* and
11. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff KEVIN ROSE (“Plaintiff”) brings this action on behalf of himself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants DAYLIGHT FOODS, INC., a California corporation; GRUBMARKET, INC., a Delaware corporation; and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff KEVIN ROSE resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant DAYLIGHT FOODS, INC. is a California corporation and lists its principal address with the California Secretary of State in South San Francisco, California. DAYLIGHT FOODS, INC. is listed as an employer on Plaintiff’s wage statements during the relevant time period that Plaintiff was employed with Defendants. Plaintiff is informed and believes, and thereupon alleges, that DAYLIGHT FOODS, INC. conducts business in San Francisco County, and throughout California, and employed, and continues to employ, individuals (including Plaintiff and Class members) in San Francisco, and throughout California.

6. Defendant GRUBMARKET, INC. is a Delaware corporation and lists its principal

1 address with the California Secretary of State in San Francisco, California. GRUBMARKET, INC.
2 is listed as an employer on documents provided to Plaintiff during the relevant time period that
3 Plaintiff was employed with Defendants. Plaintiff is informed and believes, and thereupon alleges,
4 that GRUBMARKET, INC. conducts business in San Francisco County, and throughout California,
5 and employed, and continues to employ, individuals (including Plaintiff and Class members) in San
6 Francisco County, and throughout California.

7 7. The true names and capacities, whether individual, corporate, associate, or whatever
8 else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
9 Plaintiff, who therefore sue these Defendants by such fictitious names under Code of Civil
10 Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated
11 herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner
12 for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
13 reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when
14 their identities become known.

15 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
16 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
17 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
18 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
19 respects as the employers or joint employers of Class Members. Defendants, and each of them,
20 exercised control over the wages, hours or working conditions of Class Members, or suffered or
21 permitted Class Members to work, or engaged, thereby creating a common law employment
22 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
23 employed Class Members.

24 9. Whenever and wherever reference is made in this Complaint to any act by a
25 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
26 failures to act of each defendant acting individually, jointly, and severally.

27 10. Whenever and wherever reference is made to individuals who are not named as a
28 Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants,

1 such individuals at all relevant times acted on behalf of Defendants within the scope of their
2 employment.

3 **JURISDICTION AND VENUE**

4 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
6 a Class Action on behalf of similarly situated Class Members of Defendants pursuant to California
7 Code of Civil Procedure § 382.

8 12. Venue as to Defendants is also proper in this judicial district pursuant to California
9 Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities
10 giving rise to this lawsuit occurred in part in San Francisco County. Defendants maintain and operate
11 facilities in San Francisco County and employ Plaintiff and other Class Members in San Francisco
12 County, while doing business throughout California.

13 **FACTUAL BACKGROUND**

14 13. Class Members, or some of them, worked at Defendants behest without, at times,
15 being paid all wages due. Class Members, or some of them, were either not paid by Defendants for
16 all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff
17 also contends that Defendants failed, at times, to pay Class Members, or some of them, all wages
18 due and owing, including by requiring off the clock work; failing to incorporate non-discretionary
19 bonuses and/or commissions into the regular rate of pay used to calculate and pay for overtime pay,
20 double time pay, sick pay, and meal and rest break premiums; failing to provide meal and rest
21 breaks; failing to furnish accurate wage statements; failing to timely pay wages including final
22 wages all in violation of various provisions of the California Labor Code and applicable Wage
23 Orders. Defendants also failed to pay Class Members “premium pay,” i.e. one hour of wages at each
24 Class Member’s effective hourly rate of pay, for each meal period and/or rest break that Defendants
25 failed to provide or deficiently provided.

26 14. During the course of Class Members’ employment with Defendants, they were, at
27 times, not paid all wages they were owed, including for all worked performed resulting in off the
28 clock work. Class Members, or some of them, were required to perform pre-shift and post-shift off

1 the clock work which they were not compensated for despite being subject to Defendants' control.
2 Specifically, Plaintiff and Class Members, or some of them, were, at times, required to wait in line
3 for several minutes before clocking in and out for shift and meal periods and were subject to
4 COVID-19 screenings before starting their shifts. Plaintiff was also frequently required to work off
5 the clock unloading trucks. Moreover, Defendants expected Plaintiff to respond to phone calls and
6 messages from his supervisors and co-workers on his personal cell phone at all times, including
7 times when he was off the clock. Upon information and belief, Class Members were subject to the
8 same off the clock work requirements.

9 15. Defendants, at times, also failed to pay Class Members, or some of them, all wages
10 due and owing because Defendants failed to incorporate non-discretionary bonuses and/or
11 commissions into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC
12 Wage Orders under California law, Defendants did not incorporate these non-discretionary bonuses
13 and/or commissions paid to the Class Members, or some of them, into the regular rate of pay
14 Defendants used to calculate and pay for overtime pay, double time pay, sick pay, and meal and rest
15 break premiums.

16 16. By implementing policies, programs, practices, procedures and protocols which
17 resulted in off the clock work, and failing to incorporate non-discretionary bonuses and/or
18 commissions into the regular rate of pay, Defendants' willful actions resulted, at times, in the
19 underpayment of wages to Class Members, or some of them, including underpayment of overtime
20 pay to Class Members, or some of them, over the relevant time period. For example, the above
21 described off the clock work addressed above caused Plaintiff to begin receiving overtime pay later
22 than they should have.

23 17. As a result of the above described requirements to work off the clock, failure to
24 incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
25 calculate and pay, and the other wage violations they endured at Defendants' hands, Class Members,
26 or some of them, were not properly paid all wages earned and all wages owed to them by Defendants,
27 including when working more than eight (8) hours in any given day and/or more than forty (40)
28 hours in any given week.

1 18. Defendants, at times, discouraged employees from incurring overtime, as they
2 scheduled shifts for no more than eight hours a day or forty in a week. Plaintiff felt pressured by
3 management and work demands placed upon him to work off the clock but only log his scheduled
4 shift time as time worked, and feared being terminated if he did otherwise. Upon information and
5 belief, the other Class members, or some of them, were subjected to similar common policies and
6 practices and were subjected to similar scheduling requirements and off the clock work
7 requirements.

8 19. As a result of Defendants' unlawful policies and practices, Class Members, or some
9 of them, incurred overtime hours worked for which they were not adequately and completely
10 compensated, in addition to the hours they were required to work off the clock. To the extent
11 applicable, Defendants, at times, also failed to pay Class Members, or some of them, at an overtime
12 rate of 1.5 times the regular rate for the first eight hours of the seventh consecutive workday in a
13 week and overtime payments at the rate of 2 times the regular rate for hours worked over eight (8)
14 on the seventh consecutive work day, as required under the Labor Code and applicable IWC Wage
15 Orders.

16 20. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
17 to the present, Defendants, at times, had a policy or practice of failing to pay Class Members for all
18 hours worked, and failing to pay minimum wages for all time worked, as required by California law.
19 Defendants thus failed to pay Class Members, or some of them, at least minimum wages for all the
20 time they worked for Defendants in violation of the Labor Code and applicable IWC Wage Orders
21 as the actual times when Class Members, or some of them, were under the control and direction of
22 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
23 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
24 including underpayment of overtime pay to Class Members over a period of time.

25 21. Also, from at least four (4) years prior to the filing of this lawsuit and continuing to
26 the present, Defendants also had a policy or practice of failing to pay Class Members, or some of
27 them, their true and correct overtime compensation at premium overtime rates for all hours worked
28 in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours

1 worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
2 sections of IWC Wage Orders.

3 22. Likewise, from at least four (4) years prior to the filing of this lawsuit and continuing
4 to the present, Defendants paid Plaintiff and Class Members, or some of them, non-discretionary
5 bonuses and/or commissions. However, upon information and belief, Defendants, at times, failed to
6 incorporate all remunerations, including non-discretionary bonuses and/or commissions, into the
7 calculation of the regular rate of pay for purposes of calculating sick pay. Therefore, during times
8 when Plaintiff and Class Members worked overtime and received non-discretionary bonuses and/or
9 commissions, Defendants failed to pay all sick pay by paying a lower overtime rate than required.

10 23. Additionally, Defendants, at times, failed to provide all the legally required unpaid,
11 off-duty meal periods and all the legally required paid, off-duty rest periods to Class Members, or
12 some of them, as required by the applicable Wage Order and Labor Code. Class Members, or some
13 of them, were, at times, required to perform work as ordered by Defendants for more than five (5)
14 hours during a shift but were often required to do so without receiving a lawful and timely meal
15 break. Moreover, as mentioned above, Defendants, at times, expected Plaintiff to respond to work
16 demands, including responding to phone calls on his personal cell phone, at all times, including
17 times when he was clocked out for meal breaks. Defendants placed their needs over Class Members'
18 lawful meal breaks and this resulted, at times, in Class Members, or some of them, having to work
19 through their scheduled meal breaks, or otherwise take shortened ones, because the demands of the
20 job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break.

21 24. On the occasions when Class Members worked over 10 hours in a shift, Defendants,
22 at times, failed to provide them with a second, uninterrupted, timely and duty-free meal period. As
23 a result, Defendants' failure to provide Class Members, or some of them, with all legally required
24 off-duty, unpaid meal periods and all the legally required off-duty is and will be evidenced by
25 Defendants' business records, or lack thereof. Defendants also, at times, failed to pay Class
26 Members "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of
27 pay, for each meal period that Defendants failed to provide or deficiently provided.

28 25. Therefore, for at least four years prior to the filing of this action through the present,

1 Defendants, at times, required Class Members to work shifts in excess of five (5) hours without
2 providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in
3 excess of (10) hours without providing them with second meal periods of not less than thirty
4 minutes; nor did Defendants pay Class Members, or some of them, “premium pay,” i.e. one hour of
5 wages at each Class Member’s effective hourly rate of pay, for each meal period that Defendants
6 failed to provide or deficiently provided.

7 26. Meal period violations thus occurred in one or more of the following manners:

- 8 (a) Class Members, or some of them, were, at times, not provided full thirty-
9 minute duty free meal periods for work days in excess of five (5) hours and
10 were not compensated one (1) hour’s wages in lieu thereof, all in violation
11 of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial
12 Welfare Commission Wage Order(s);
- 13 (b) Class Members, or some of them, were, at times, not provided second full
14 thirty-minute duty free meal periods for work days in excess of ten (10)
15 hours;
- 16 (c) Class Members, or some of them, were, at times, required to work through
17 at least part of their daily meal period(s);
- 18 (d) Meal periods were, at times, provided after five (5) hours of continuous work
19 during a shift; and
- 20 (e) Class Members, or some of them, were, at times, restricted in their ability to
21 take a full thirty-minute meal period.

22 27. Class Members, or some of them, were, at times, also not authorized and permitted
23 to take lawful rest periods, were required by Defendants to work through or during breaks and were
24 not provided with one (1) hour of wages in lieu thereof. Class Members, or some of them, were, at
25 times, restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not
26 provided with duty-free rest periods. In addition, as mentioned above, Defendants, at times,
27 expected Plaintiff to respond to phone calls on his personal cell phone at all times, including while
28 taking rest breaks. Therefore, from at least four years prior to the filing of this lawsuit and continuing

1 to the present, Defendants have consistently failed to provide Class Members, or some of them, with
2 paid rest breaks of not less than ten minutes for every work period of four or more consecutive
3 hours, or major fraction thereof, nor did Defendants pay Class Members, or some of them, premium
4 pay for each day on which requisite rest breaks were not provided or were deficiently provided.

5 28. Rest period violations therefore arose in one or more of the following manners:

6 (a) Class Members, or some of them, were, at times, required to work without
7 being provided a minimum ten (10) minute rest period for every four (4)
8 hours or major fraction thereof worked and were not compensated one (1)
9 hour of pay at their regular rate of compensation for each workday that a rest
10 period was not provided;

11 (b) Class Members, or some of them, were, at times, not authorized and
12 permitted to take timely rest periods for every four hours worked, or major
13 fraction thereof; and

14 (c) Class Members, or some of them, were, at times, required to remain on-duty
15 during rest periods or otherwise had their rest periods interrupted by work
16 demands.

17 29. Defendants also failed, at times, to issue accurate itemized wage statements as
18 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members, or
19 some of them, failed to accurately list the total hours worked by Plaintiff and Class Members. Thus,
20 the wage statements do not comply with Labor Code § 226(a)(2). Moreover, the wage statements
21 given to Class Members, or some of them, failed to list all applicable rates of pay, including by
22 failing to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay
23 used to calculate and pay overtime pay, double time pay, sick pay, and meal and rest break
24 premiums. Thus, the wage statements do not comply with Labor Code § 226(a)(9). Finally, the wage
25 statements given to Class Members, or some of them, failed to accurately account for premium pay
26 for deficiently provided meal periods and rest breaks.

27 30. From at least four (4) years prior to filing this lawsuit and continuing to the present,
28 Defendants have thus, at times, also had a policy of failing to pay all wages owed to Class Members,

1 or some of them, at the time of their termination of within seventy-two (72) hours of their
2 resignation, as required by California wage-and-hour laws. Class Members, or some of them, were
3 not paid all regular and overtime wages because Defendants, at times, failed to pay for all hours
4 worked by failing to incorporate non-discretionary bonuses and/or commissions into the regular rate
5 of pay used to calculate and pay overtime pay, double time pay, sick pay, and meal and rest break
6 premiums, and failing to pay meal and rest break premiums owed, as further detailed in this
7 Complaint. Defendants' failure to pay said wages within the required time was willful within the
8 meaning of Labor Code § 203.

9 31. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
10 continuing to the present, Defendants, at times, have failed to keep accurate time and wage records
11 as required by California wage-and-hour laws.

12 32. Additionally, from at least four (4) years prior to the filing of this lawsuit and
13 continuing to the present, Defendants have, at times, required Plaintiff to incur business expenses
14 in the course of performing required job duties for Defendants, including for cell phone expenses
15 and protective gear. Upon information and belief, Class Members incurred similar costs. These
16 expenses incurred by Plaintiff and Class Members were necessary and required of them in
17 performing their assigned job duties, but Defendants failed to fully reimburse Plaintiff and Class
18 Members for all such necessary expenditures, thus entitling them to reimbursement according to
19 proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

20 33. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
21 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 245, 246, 510, 512, 558, 558.1,
22 1182.12, 1185, 1194, 1194.2, 1197, 1198, and 1199, 2698 et seq., 2802, and California Code of
23 Regulations, Title 8, section 11000 *et seq.*

24 34. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
25 and the Class Members, or some of them, seek injunctive relief, restitution, and disgorgement of all
26 benefits Defendants have enjoyed from their violations of Labor Code and the other unfair,
27 unlawful, or fraudulent practices alleged in this Complaint.

28 ///

CLASS ALLEGATIONS

35. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class Members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Overtime Subclass. All Class Members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

d. Subclass 4. Meal Period Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Class Member's regular rate of pay in lieu thereof.

e. Subclass 5. Rest Break Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to authorize and permit Class Members to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

f. Subclass 6. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

h. Subclass 8. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 9. Expense Reimbursement Subclass. All Class Members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendant and who were subject to a policy and/or practice under which such expenses were not reimbursed.

1 j. Subclass 10. UCL Subclass. All Class Members who are owed restitution as a result
2 of Defendants' business acts and practices, to the extent such acts and practices are found to be
3 unlawful, deceptive, and/or unfair.

4 36. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify
5 the class description with greater particularity or further division into subclasses or limitation to
6 particular issues. To the extent equitable tolling operates to toll claims by the Class against
7 Defendants, the Class Period should be adjusted accordingly.

8 37. Defendants, as a matter of company policy, practice and procedure, and in violation
9 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
10 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in
11 a practice whereby Defendants failed to correctly calculate compensation for the time worked by
12 Class Members, even though Defendants enjoyed the benefit of this work, required Class Members
13 to perform this work and permitted or suffered to permit this work. Defendants have uniformly
14 denied these Class Members wages to which these employees are entitled and failed to provide meal
15 periods or authorize and permit rest periods, in order to unfairly cheat the competition and
16 unlawfully profit.

17 38. This action has been brought and may properly be maintained as a class action under
18 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of
19 interest in litigation and proposed class is easily ascertainable.

20 **A. Numerosity**

21 39. The potential members of the class as defined are so numerous that joinder of all the
22 member of the class is impracticable. While the precise number of Class Members has not been
23 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
24 time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within
25 the State of California.

26 40. Accounting for employee turnover during the relevant time period increases this
27 number substantially. Plaintiff alleges that Defendants' employment records will provide
28 information as to the number and location of all Class Members.

B. Commonality

41. There are questions of law and fact common to the Class that predominates over any questions affecting only individual Class Members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;
- c. Whether Defendants failed to pay Class Members overtime as required under Labor Code § 510;
- d. Whether Defendants failed to properly pay Employees sick pay as required under Labor Code § 245;
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Class Members with requisite meal periods or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Class Members to take requisite rest breaks or provide premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226(a) by providing Class Members with inaccurate wage statements;
- h. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;
- k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- l. Whether Defendants conduct was willful; and

m. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

42. The claims of the named plaintiff is typical of those of Class Members. The Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

43. Plaintiff will fairly and adequately represent and protect the interest of the Class Members. Counsel who represents Class Members are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

44. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to all Class Members predominate over any questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Class Members properly.

45. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class Members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class Members. Further, as the economic or other loss suffered by vast numbers of Class Members may be relatively small, the expense and burden of individual actions makes it difficult for the Class Members to individually redress the wrongs they have suffered. Moreover, in the event disgorgement is ordered, a class action is the only mechanism that will permit the employment of a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in managing this case as a class action, and proceeding on a class-wide basis will permit Class Members to vindicate their rights for violations they endured which they would otherwise be

1 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
2 them.

3 46. Class action treatment will allow those persons similarly situated to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
6 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would set
7 forth the subject and nature of the instant action. The Defendants' own business records can be
8 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that
9 any further notice is required additional media and/or mailings can be used.

10 47. Defendants, as prospective and actual employers of the Class Members, had a special
11 fiduciary duty to disclose to prospective Class Members the true facts surrounding Defendants' pay
12 practices, policies and working conditions imposed upon Class Members as well as the effect of any
13 alleged arbitration agreements that may have been forced upon them. In addition, Defendants knew
14 they possessed special knowledge about pay practices and policies, most notably intentionally
15 refusing to pay for all hours actually worked which should have been recorded in Defendants' pay
16 records and the consequence of the alleged arbitration agreements and policies and practices on
17 Class Members.

18 48. Class Members did not discover the fact that they were entitled to all pay under the
19 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
20 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
21 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
22 preventing such practices from continuing. As a result, the applicable statutes of limitation were
23 tolled until such time as Plaintiff and the Class Members discovered their claims.

24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY MINIMUM WAGES**
26 **(Against All Defendants)**

27 49. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 50. Defendants, at times, failed to pay Class Members, or some of them, minimum wages
2 for all hours worked. Defendants, at times, had a consistent policy of failing to pay Class Members,
3 or some of them, for all hours worked. Employees would work hours and not receive all wages
4 owed, including as alleged above in connection with off the clock work, and the miscalculation of
5 the regular rate of pay, including all the time required to remain on duty and under Defendants'
6 control during breaks and due to the work demands placed upon them by Defendants' management.
7 Defendants, and each of them, have, at times, intentionally and improperly changed, adjusted and/or
8 modified the hours of Class Members, or some of them, which resulted in off the clock work and
9 underpayment of all wages owed to Class Members, or some of them, over a period of time, while
10 benefiting Defendants. During the relevant time period, Defendants, at times, thus failed to pay
11 minimum wages to Class Members, to their detriment. Additionally, Defendants had a policy of
12 failing to pay Class Members, or some of them, for hours worked during alleged meal and rest
13 periods for which Class Members were denied, as also addressed herein. Defendants' pattern of
14 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole,
15 as a result of implementing a policy and practice that denied accurate compensation to Class
16 Members, or some of them, as to minimum wage pay.

17 51. In California, employees must be paid at least the then applicable state minimum
18 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
19 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
20 timely pay its employees for all hours worked. Defendants failed to do so.

21 52. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
22 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
23 employees, and the payment of a less wage than the minimum so fixed is unlawful."

24 53. The applicable minimum wages fixed by the commission for work during the
25 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

26 54. The minimum wage provisions of California Labor Code are enforceable by private
27 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
28 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal

1 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
2 balance of the full amount of this minimum wage or overtime compensation, including interest
3 thereon, reasonable attorney's fees and costs of suit."

4 55. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
5 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
6 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
7 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
8 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
9 be used as a credit against a minimum wage obligation.

10 56. California Labor Code § 1194.2 also provides for the following remedies: "In any
11 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
12 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
13 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

14 57. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
15 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
16 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
17 minimum wages.

18 58. Pursuant to California Labor Code § 1194.2, Class Members, or some of them, are
19 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
20 interest thereon.

21 59. Defendants have the ability to pay minimum wages for all time worked and have, at
22 times, willfully refused to pay such wages with the intent to secure for Defendants a discount upon
23 this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

24 60. Wherefore, Class Members, or some of them, are entitled to recover the unpaid
25 minimum wages (including double minimum wages), liquidated damages in an amount equal to the
26 minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit
27 pursuant to California Labor Code § 1194(a). Plaintiff and the other members of the Class further
28 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the

assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code, including § 558, and/or other applicable statutes.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

61. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

62. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action may be maintained directly against the employer in an employee’s name without first filing a claim with the Division of Labor Standards and Enforcement.

63. By their conduct, as set forth herein, Defendants, at times, violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek.

64. Defendants, at times, had a consistent policy of not paying Class Members, or some of them, wages for all hours worked, including by requiring off the clock work or otherwise caused them to work off the clock to avoid paying Plaintiff and the Class Members, or some of them, all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also, at times, violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods or remain under Defendants’ control when they were required to be clocked out or to

1 otherwise work off the clock to complete their daily job duties and respond to demands from
2 customers and managers. Therefore, Class Members, or some of them, were not properly
3 compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a given
4 day, and/or forty hours in a given week. Based on information and belief, Defendants did not make
5 available to Employees a reasonable protocol for correcting time records when Employees worked
6 overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded
7 to the Employee's detriment. Defendants have also, at times, violated these provisions by requiring
8 Plaintiff and other similarly situated Class Members, or some of them, to work through meal periods
9 when they were required to be clocked out or to otherwise work off the clock to complete their daily
10 job duties

11 65. Additionally, Defendants, at times, failed to incorporate non-discretionary bonuses
12 and/or commissions into the regular rate of pay used to calculate and pay overtime pay, double time
13 pay, sick pay, and meal and rest break premiums. Defendants, and each of them, have intentionally
14 and improperly changed, adjusted and/or modified certain employees' hours, including Plaintiff's,
15 in order to avoid paying Class Members, or some of them, all earned and owed straight time and
16 overtime wages and other benefits, in violation of the California Labor Code, the California Code
17 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
18 Standards and Enforcement. Defendants have also, at times, violated these provisions by requiring
19 Class Members to work through portions of their meal period. Therefore, Class Members, or some
20 of them, were not properly compensated, nor were they paid overtime rates for hours worked in
21 excess of eight hours in a given day, and/or forty hours in a given week. Based on information and
22 belief, Defendants did not make available to Class Members a reasonable protocol for correcting
23 time records when Class Members worked overtime hours or to fix incorrect time entries.

24 66. Defendants' failure to pay Class Members, or some of them, the unpaid balance of
25 regular wages owed and overtime compensation, as required by California law, violates the
26 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

27 67. Additionally, Labor Code § 558(a) provides "any employer or other person acting on
28 behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
2 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
3 pay period for which the employee was underpaid in addition to an amount sufficient to recover
4 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
5 employee for each pay period for which the employee was underpaid in addition to an amount
6 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to
7 the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in this section
8 are in addition to any other civil or criminal penalty provided by law.” Defendants have violated
9 provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
10 Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor Code § 558.

11 68. Defendants’ failure, at times, to pay compensation in a timely fashion also
12 constituted a violation of California Labor Code § 204, which requires that all wages shall be paid
13 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation
14 of that provision of the California Labor Code, Defendants have, at times, failed to pay all wages
15 and overtime compensation earned by Class Members. Each such failure to make a timely payment
16 of compensation to Class Members, or some of them, constitutes a separate violation of California
17 Labor Code § 204.

18 69. Class Members, or some of them, have been damaged by these violations of
19 California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare
20 Commission).

21 70. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204,
22 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B), Defendants are
23 liable to Class Members, or some of them, for the full amount of all their unpaid wages and overtime
24 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment
25 of any statutory penalties against Defendants, and each of them, and any additional sums as provided
26 by the Labor Code and/or other statutes.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246**

3 **(Against All Defendants)**

4 71. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 72. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
7 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
8 times relevant, Defendants, at times, have failed to properly compute the amount due for paid sick
9 time in conformance with the pay calculation under California Labor Code § 246(1).

10 73. Defendants, at times, paid non-discretionary bonuses and/or commissions to
11 Employees but Defendants failed to include these forms of remuneration in the regular rate of pay
12 upon which sick pay was calculated and paid. Rather than calculating the amount of paid sick time
13 due when sick time is used according to the requirements set forth in California Labor Code §
14 246(1), Defendants, at times, paid sick leave to Class Members, or some of them, at a lower rate, in
15 violation of the law.

16 74. Therefore, Plaintiff and Class Members seek to recover penalties pursuant to Labor
17 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

18 **FOURTH CAUSE OF ACTION**

19 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

20 **(Against All Defendants)**

21 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 76. Class Members, or some of them, worked shifts greater than five (5) hours and in
24 some instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not
25 employ someone for a shift of more than five (5) hours without providing him or her with a meal
26 period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing
27 him or her with a second meal period of not less than thirty (30) minutes.

28 77. As discussed above, Defendants, at times, failed to provide Class Members, or some

1 of them, with meal periods as required under the Labor Code. Defendants placed their needs over
2 Class Members lawful meal breaks and this resulted in Class Members, or some of them, having to
3 work through their scheduled meal breaks because the demands of the job would not avail them the
4 opportunity to take a lawfully uninterrupted and off-duty meal break. Furthermore, upon
5 information and belief, on the occasions when Class Members, or some of them, worked more than
6 ten (10) hours in a given shift, at times, they did so without receiving a second uninterrupted thirty
7 (30) minute meal period as required by law.

8 78. Defendants thus failed, at times, to provide Class Members, or some of them, with
9 meal periods as required by the Labor Code, including by not providing them with the opportunity
10 to take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them
11 to perform work during breaks.

12 79. Moreover, Defendants, at times, failed to compensate Class Members, or some of
13 them, for each meal period not provided or inadequately provided, as required under Labor Code §
14 226.7 and paragraph 11 of the applicable IWC Wage Orders, which provide that, if an employer
15 fails to provide an employee a meal period in accordance with this section, the employer shall pay
16 the employee one (1) hour of pay at the employee's regular rate of compensation for each workday
17 that the meal period is not provided. Defendants failed, at times, to compensate Class Members, or
18 some of them, for each meal period not provided or inadequately provided, as required under Labor
19 Code § 226.7. Additionally, upon information and belief, when Defendants did pay meal period
20 premiums, they did so at the normal regular rate of pay without factoring in all forms or
21 remuneration/compensation or by otherwise incorrectly calculating the regular rate.

22 80. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
23 paragraph 11, Class Members, or some of them, are entitled to damages in an amount equal to one
24 (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
25 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties
26 against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

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1 **FIFTH CAUSE OF ACTION**

2 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 81. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 82. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
7 that employers must authorize and permit all employees to take rest periods at the rate of ten (10)
8 minutes net rest time per four (4) work hours.

9 83. Class Members, or some of them, worked consecutive four (4) hour shifts and were
10 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize
11 and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage
12 Order, Class Members, or some of them, were entitled to paid rest breaks of not less than ten (10)
13 minutes for each consecutive four (4) hour shift, and Defendants, at times, failed to provide Class
14 Members with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour
15 shift. Defendants placed their needs over Class Members, or some of them, lawful rest breaks, and
16 this resulted in Class Members having to work through their scheduled rest breaks because the
17 demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off-
18 duty rest break.

19 84. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
20 that if an employer fails to provide an employee a rest period in accordance with this section, the
21 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
22 for each workday that the rest period is not provided.

23 85. Defendants, and each of them, have therefore intentionally and improperly denied
24 rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the
25 applicable IWC Wage Orders.

26 86. Defendants, at times, failed to authorize and permit Class Members, or some of them,
27 to take rest periods, as required by the Labor Code. Moreover, Defendants, at times, did not
28 compensate Class Members with an additional hour of pay at each Class Member's effective hourly

1 rate for each day that Defendants failed to provide them with adequate rest breaks, as required under
2 Labor Code § 226.7.

3 87. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
4 Wage Orders, Class Members, or some of them, are entitled to damages in an amount equal to one
5 (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest
6 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
7 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS UNDER**

10 **LABOR CODE § 226(a)**

11 **(Against All Defendants)**

12 88. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 89. California Labor Code § 226(a) requires an employer to furnish each of his or her
15 employees with an accurate, itemized statement in writing showing the gross and net earnings, total
16 hours worked, and the corresponding number of hours worked at each hourly rate; these statements
17 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay
18 the employee's wages; or, if wages are paid by cash or personal check, these statements may be
19 given to the employee separately from the payment of wages; in either case the employer must give
20 the employee these statements twice a month or each time wages are paid.

21 90. Defendants, at times, failed to provide Class Members, or some of them, with
22 accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage
23 statements given to Employees failed to accurately list the total hours worked by Employee. Thus,
24 the wage statements do not comply with Labor Code § 226(a)(2). Additionally, the wage statements
25 given to Class Members, or some of them, failed to list all applicable rates of pay, including by
26 failing to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay
27 used to calculate and pay overtime pay, double time pay, sick pay, and meal and rest break
28 premiums. Thus, the wage statements do not comply with Labor Code § 226(a)(9). Additionally,

1 the wage statements given to Class Members failed to accurately account for premium pay for
2 deficiently provided meal periods and rest breaks.

3 91. Throughout the liability period, Defendants, at times, intentionally failed to furnish
4 to Class Members, or some of them, upon each payment of wages, itemized statements accurately
5 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
6 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
7 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
8 the employee and only the last four digits of his or her social security number or an employee
9 identification number other than a social security number, (8) the name and address of the legal
10 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code
12 § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed to
13 provide Class Members, or some of them, with such timely and accurate wage and hour statements.

14 92. Class Members, or some of them, suffered injury as a result of Defendants' knowing
15 and intentional failure to provide them with the accurate wage and hour statements as required by
16 law and are presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e),
17 as the Defendants, at times, have failed to provide wage statements with accurate and complete
18 information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and
19 Class Members cannot promptly and easily determine from the wage statement alone one or more
20 of the following: (i) The amount of the gross wages or net wages paid to the employee during the
21 pay period or any of the other information required to be provided on the itemized wage statement
22 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the
23 employer made from gross wages to determine the net wages paid to the employee during the pay
24 period, (iii) The name and address of the employer and, (iv) The name of the employee and only the
25 last four digits of his or her social security number or an employee identification number other than
26 a social security number. For purposes of Labor Code § 226(e) "promptly and easily determine"
27 means a reasonable person [i.e. an objective standard] would be able to readily ascertain the
28 information without reference to other documents or information.

93. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Class Members, or some of them, suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

94. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC Wage Order, paragraph 7(B), Class Members, or some of them, are 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) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION

FAILURE TO MAINTAIN RECORDS UNDER LABOR CODE §§ 1174 and 1174.5

(Against All Defendants)

95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

96. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

97. During the course of Plaintiff's and Class Members', or some of them, employment, Defendants, at times, failed to maintain accurate time and wage records for Plaintiff and Employees as required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime, and premium pay as discussed above.

98. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY WAGES UNDER LABOR CODE § 203**

3 **(Against All Defendants)**

4 99. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 100. Numerous Class Members are no longer employed by Defendants; they either quit
7 Defendants' employ or were fired therefrom.

8 101. Defendants, at times, failed to pay these Class Members, or some of them, all wages
9 due and certain at the time of termination or within seventy-two (72) hours of resignation.

10 102. The wages withheld from these Class Members, or some of them, by Defendants
11 remained due and owing for more than thirty (30) days from the date of separation from
12 employment.

13 103. Defendants, at times, failed to pay Class Members, or some of them, without
14 abatement, all wages as defined by applicable California law. Class Members, or some of them,
15 were not paid all regular and overtime wages because Defendants failed to pay for all hours worked
16 by required off the clock work and failing to incorporate non-discretionary bonuses and/or
17 commissions into the regular rate of pay used to calculate and pay for overtime pay, double time
18 pay, sick pay, and meal and rest break premiums. Additionally, Defendants, at times, failed to pay
19 premium wages owed for unprovided meal periods and rest periods, as further detailed in this
20 Complaint. Defendants' failure to pay said wages within the required time was willful within the
21 meaning of Labor Code § 203.

22 104. Defendants' failure to pay wages, as alleged entitles these Class Members to
23 penalties under Labor Code § 203, which provides that an employee's wages shall continue until
24 paid for up to thirty (30) days from the date they were due.

25 **NINTH CAUSE OF ACTION**

26 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

27 **(Against All Defendants)**

28 105. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in

1 full herein.

2 106. Under Labor Code § 2802(a) an employer must indemnify its employees for all
3 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
4 of his or her duties, or of his or her obedience to the directions of the employer.

5 107. Defendants, at times, have required Plaintiff to incur business expenses in the course
6 of performing his required job duties for Defendants including for cell phone expenses and required
7 protective gear. Upon information and belief, Class Members, or some of them, incurred similar
8 costs. These expenses incurred by Plaintiff and Class Members were necessary and required of them
9 in performing their assigned job duties, but Defendants failed to fully reimburse Plaintiff and Class
10 Members, or some of them, for all such necessary expenditures, thus entitling them to
11 reimbursement according to proof as required under Labor Code § 2802 and the applicable
12 provisions of the IWC Wage Orders, paragraph 9.

13 108. As a result of the unlawful acts of Defendants, Class Members, or some of them,
14 have been deprived of reimbursement in amounts to be determined at trial; they are entitled to
15 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

16 **TENTH CAUSE OF ACTION**

17 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

18 **(Against All Defendants)**

19 109. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 110. Plaintiff, on behalf of himself, Class Members, and the general public, brings this
22 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
23 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
24 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
25 interest within the meaning of Code of Civil Procedure § 1021.5.

26 111. Plaintiff is a "person" within the meaning of Business & Professions Code
27 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
28 relief, restitution, and other appropriate equitable relief.

112. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent in that Defendants' policy and practice failed to provide the required amount of compensation for missed meal and rest breaks, and failed to adequately compensate Class Members for all hours worked, due to systematic business practices as alleged herein that cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

113. Wage-and-hour laws express fundamental public policies. Paying employees their wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously to enforce minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower costs to themselves by failing to comply with minimum labor standards.

114. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges guaranteed to all employees under the law.

115. Defendants' conduct, as alleged above, constitutes unfair competition in violation of the Business & Professions Code § 17200 *et seq.*

116. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of reasonable care should have known that their conduct was unlawful; therefore their conduct violates the Business & Professions Code § 17200 *et seq.*

117. By the conduct alleged herein, Defendants have engaged and continue to engage in a business practice which violates California and federal law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1198, and 1199, for which this Court should issue declaratory and other equitable relief pursuant to California Business & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

118. As a proximate result of the above-mentioned acts of Defendants, Class Members have been damaged, in a sum to be proven at trial.

119. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Class Members to the money Defendants have unlawfully failed to pay.

ELEVENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, ET SEQ.

(Against All Defendants)

120. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

121. Plaintiff and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants (“Aggrieved Employees”) during the relevant time period.

122. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to provide accurate wage statements, and failing to Pay

1 Employees upon termination or timely upon resignation, all discussed above, Defendants failed to
2 timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code §
3 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages
4 paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable
5 IWC Wage Orders.

6 123. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
7 for Defendants' violation of Labor Code provisions included under Labor Code 2699.5, including
8 the penalty provisions, without limitation, based, inter alia, on the following California Labor Code
9 sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1,
10 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

11 124. More specifically, after complying with the notice procedures of Labor Code §
12 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General and
13 other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
14 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
15 including as follows:

16 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
17 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
18 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
19 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
20 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510, 558,
21 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to
22 Labor Code § 2699(g)(1);

23 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
24 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
25 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
26 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
27 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
28 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558,

1 including sections 558(a)(1)-(3), 1199, and 2699(f)(2), and also for attorneys' fees and costs
2 pursuant to Labor Code § 2699(g)(1);

3 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
4 Plaintiff and Aggrieved Employees with accurate, itemized wage statements and failure to maintain
5 employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and
6 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil
7 and statutory penalties and wages available and applicable under Labor Code §§ 226€, 226.3, 558,
8 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for
9 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing
10 inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a),
11 Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3,
12 which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount
13 of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand
14 dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

15 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
16 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
17 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
18 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
19 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
20 § 2699(g)(1);

21 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code
22 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
23 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
24 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
25 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
26 Labor Code § 2699(g)(1).

27 125. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seeks
28 the penalties and remedies set forth in Labor Code § 558, which states:

1 (a) Any employer or other person acting on behalf of an employer who violates, or
2 causes to be violated, a section of this chapter or any provision regulating hours and days of work
3 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
4 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
5 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
6 (2) For any subsequent violation, one hundred dollars (\$100) for each underpaid employee for each
7 pay period for which the employee was underpaid in addition to an amount sufficient to recover
8 underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
9 employee.

10 (b) If upon inspection or investigation the Labor Commissioner determines that a person
11 had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter,
12 or any provision regulating hours and days of work in any order of the Industrial Welfare
13 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
14 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
15 violation of this chapter shall be the same as those set out in Section 1197.1.

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

18 126. Plaintiff has exhausted his administrative remedies by sending a certified letter to
19 the LWDA and Defendants postmarked on **June 21, 2024**, addressing in detail the specific
20 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
21 to support the alleged violations and requested penalties. The LWDA has not provided notice of
22 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
23 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
24 herein and in the PAGA Notice Letter and the original Complaint.

25 **RELIEF REQUESTED**

26 WHEREFORE, Plaintiff prays for the following relief:

- 27 1. For an order certifying this action as a class action;
- 28 2. For compensatory damages in the amount of the unpaid minimum wages for work

1 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
2 to the filing of this action, as may be proven;

3 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
4 thereon, from at least four (4) years prior to the filing of this action, according to proof;

5 4. For compensatory damages in the amount of all unpaid wages, including overtime
6 and double-time pay, as may be proven;

7 5. For restitution and/or damages for all amounts unlawfully withheld from the wages
8 for all Class Members in violation of Labor Code § 246, as may be proven;

9 6. For compensatory damages in the amount of the hourly wage made by Class
10 Members for each missed or deficient meal period where no premium pay was paid therefor from
11 four (4) years prior to the filing of this action, as may be proven;

12 7. For compensatory damages in the amount of the hourly wage made by Class
13 Members for each day requisite rest breaks were not provided or were deficiently provided where
14 no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as
15 may be proven;

16 8. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;

17 9. For penalties pursuant to Labor Code § 1174.5, as may be proven;

18 10. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were
19 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

20 11. For restitution and/or damages for all amounts unlawfully withheld from the wages
21 for all Class Members in violation of Labor Code § 2802, as may be proven;

22 12. For restitution for unfair competition pursuant to Business & Professions Code
23 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

24 13. For an order enjoining Defendants and their agents, servants, and employees, and all
25 persons acting under, in concert with, or for them, from acting in derogation of any rights or duties
26 adumbrated in this Complaint;

27 14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

28 15. For other wages and penalties under the Labor Code as may be proven;

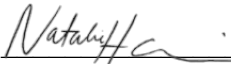
- 1 16. For all general, special, and incidental damages as may be proven;
- 2 17. For an award of pre-judgment and post-judgment interest;
- 3 18. For an award providing for the payment of the costs of this suit;
- 4 19. For an award of attorneys' fees; and
- 5 20. For such other and further relief as this Court may deem proper and just.

6 DATED: August 26, 2024

D.LAW, INC.

7

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By:  _____

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David Yermian

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Natalie Haritonian

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Matthew Carraher

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Attorneys for Plaintiff KEVIN ROSE and all
others similarly situated

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DATED: August 26, 2024

By: Natalie Haritonian
David Yereimian
Natalie Haritonian
Matthew Carraher
Attorneys for Plaintiff KEVIN ROSE and all
others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

O'Melveny

O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
[Website](#) | [LinkedIn](#) | [Twitter](#)

Attorneys For Defendants Daylight Foods, et al

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 26, 2024, at Glendale, California.


Silvia Pimentel