

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian (SB# 272020)

3 hm@messrelianlaw.com

4 Maralle Messrelian, Of Counsel (SB#316974)

5 maralle@messrelianlaw.com

6 500 N. Central Ave., Suite 840

7 Glendale, California 91203

8 Telephone: (818) 484-6531

9 Facsimile: (818) 956-1983

10 Attorneys for Plaintiff,

11 RAYMUNDO LOPEZ, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF MONTEREY**

14 **(UNLIMITED JURISDICTION)**

15 RAYMUNDO LOPEZ, on behalf of himself,
16 all others similarly situated, and the
17 general public, and as an “aggrieved
18 employee” on behalf of other “aggrieved
19 employees” under the Labor Code Private
20 Attorneys General Act of 2004,

21 *Plaintiff,*

22 *vs.*

23 R. MONTANEZ FARMS, LLC, a California
24 limited liability company; JOSE ROCHA
25 MONTANEZ, an individual; and DOES
26 1-25, inclusive,

27 *Defendants.*

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 1/14/2025 1:24 PM
By: Jose Lopez, Deputy

Case No.: 25CV000262

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197, and 1198);
4. Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194, and 1198);
5. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
6. Wage Statement Penalties (Lab. Code § 226);
7. Waiting Time Penalties (Lab. Code §§ 201-203);
8. Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
9. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
10. Penalties Under the Private Attorneys General Act (“PAGA”) (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

1 Plaintiff, RAYMUNDO LOPEZ (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order Nos. 8/13/14-2001 (hereafter “the Wage Orders”)
6 and the Business and Professions Code, against Defendants R. MONTANEZ FARMS, LLC,
7 JOSE ROCHA MONTANEZ, and DOES 1-25, inclusive (collectively “Defendants” or
8 “MONTANEZ FARMS”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former California-based hourly workers, for unpaid
11 wages, statutory penalties, interest, and related relief. These claims are based on Defendants’
12 alleged failures to (1) pay all wages earned for all hours worked, (2) provide all meal and rest
13 periods in compliance with California law, (3) indemnify Plaintiff and the below-described class
14 for reasonable expenses incurred performing their duties, (4) provide accurate written wage
15 statements, (5) timely pay all wages during and upon termination of employment, and (6) fairly
16 compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this
17 class and representative action.

18 **PARTIES**

19 3. Plaintiff RAYMUNDO LOPEZ is a resident of California. At all relevant times,
20 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section
21 11080/11130/11140 and an “aggrieved employee” within the meaning of Labor Code Section
22 2699(c).

23 4. Defendant R. MONTANEZ FARMS, LLC is a limited liability company
24 organized and existing under the laws of California and which employed Plaintiff and the Class
25 Members. As such, it is a citizen of California based on Plaintiff’s information and belief.

26 5. Defendant JOSE ROCHA MONTANEZ is a citizen of California based on
27 Plaintiff’s information and belief.

28 6. In relevant part, Labor Code section 558.1 states:

1 (a) Any employer or other person acting on behalf of an employer, who violates,
2 or causes to be violated, any provision regulating minimum wages or hours and
3 days of work in any order of the Industrial Welfare Commission, or violates, or
4 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
5 held liable as the employer for such violation.

6 (b) For purposes of this section, the term “other person acting on behalf of an
7 employer” is limited to a natural person who is an owner, director, officer, or
8 managing agent of the employer, and the term “managing agent” has the same
9 meaning as in subdivision (b) of Section 3294 of the Civil Code.

7 7. Plaintiff is informed and believes and thereon alleges that JOSE ROCHA
8 MONTANEZ is a natural person and an owner, director, officer, and/or managing agent of
9 Defendant R. MONTANEZ FARMS, LLC who directly or indirectly, or through an agent or any
10 other person, employed or exercised control over the wages, hours, or working conditions of
11 Plaintiff and the Class Members (as defined below). Therefore, he is liable to Plaintiff and the
12 Class Members for his violations of, or causing Defendants to violate, Labor Code sections 203,
13 226, 226.7, 1193.6, 1194, 2802, and the Wage Orders (nos. 8/13/14) pursuant to Labor Code
14 section 558.1.

15 8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
16 participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but
17 is informed and believes and thereon alleges that said Defendants are legally responsible for the
18 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
19 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
20 when ascertained.

21 9. Plaintiff is informed and believes and thereon alleges that, at all relevant times
22 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
23 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
24 and scope of such agency or employment and with the approval and ratification of each of the
25 other Defendants.

26 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
27 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
28 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-

described class in accordance with applicable laws as alleged herein.

11. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

12. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

13. **Class Definition:** The Class is defined as follows: All current and former hourly, non-exempt employees who worked for Defendants R. MONTANEZ FARMS, LLC and JOSE ROCHA MONTANEZ at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is rendered in this action.

14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

15. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

16. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,

1 meal period premium, and rest period premium;

2 B. Whether Defendants failed to provide the Class Members with all meal
3 periods in compliance with California law;

4 C. Whether Defendants failed to authorize and permit the Class Members to
5 take all rest periods in compliance with California law;

6 D. Whether Defendants failed to indemnify the Class Members for the
7 reasonable expenses they incurred during the course of performing their duties;

8 E. Whether Defendants knowingly and intentionally failed to provide the
9 class with accurate and complete itemized wage statements;

10 F. Whether Defendants willfully failed to provide the Class Members with all
11 wages earned every pay period during employment;

12 G. Whether Defendants willfully failed to provide the Class Members with
13 timely final wages;

14 H. Whether Defendants failed to provide the Class Members with paid sick
15 leave;

16 I. Whether Defendants failed to maintain accurate employment records
17 pertaining to all of the Class Members;

18 J. Whether Defendants engaged in unfair competition within the meaning of
19 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

20 K. Whether Class Members are entitled to restitution of money or property
21 that Defendants may have acquired from them through alleged Labor Code violations.

22 17. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
23 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
24 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
25 Code, the Wage Orders, and the Business and Professions Code.

26 18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
27 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
28 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class

1 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
2 Members.

3 19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
4 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
5 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
6 Plaintiff and absent Class Members.

7 20. **Superiority:** A class action is vastly superior to other available means for fair and
8 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
9 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
10 and efficiently prosecute their common claims in a single forum without the unnecessary
11 duplication of effort and expense that numerous individual actions would entail. In addition, the
12 monetary amounts due to many individual Class Members are likely to be relatively small and
13 would thus make it difficult, if not impossible, for individual Class Members to both seek and
14 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
15 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
16 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

17 **STATEMENT OF FACTS**

18 21. Plaintiff first started working for MONTANEZ FARMS on or around 2022 as a
19 laborer. Plaintiff was and is classified as an hourly, non-exempt employee. Plaintiff's latest rate
20 of pay was \$16.00 per hour. Plaintiff is still currently employed by MONTANEZ FARMS.

21 22. MONTANEZ FARMS violated Labor Code § 1194, 1194.2, 1197, and 1197.1
22 because it failed to pay Plaintiff and other Class Members for all hours worked, including the
23 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
24 MONTANEZ FARMS had a company policy wherein they would disproportionately round
25 down the number of hours worked for Plaintiff and other Class Members, resulting in "time
26 shaving" and further resulting in Class Members not being paid for all hours worked.
27 Furthermore, employees such as Plaintiff did not control their clock in and clock out as foreman
28 would punch in and punch out employees. As such, Plaintiff had no control over making sure

1 that his work hours were accurate. Moreover, MONTANEZ FARMS failed to provide its
2 employees, including Plaintiff and other Class Members, with proper and accurate reporting time
3 pay.

4 23. Due to the above “off the clock” violations, MONTANEZ FARMS also violated
5 Labor Code §510 because it failed to pay Plaintiff and other Class Members the correct and
6 accurate overtime compensation, even though they worked more than 8, 8.5, or 9 hours per day,
7 12 hours per day, and/or 40/50 hours per week throughout their employment. Plaintiff’s and other
8 Class Members’ actual work hours entitled them to overtime compensation, however,
9 MONTANEZ FARMS did not compensate its hourly, non-exempt employees with the correct
10 amount of overtime due to the “off the clock” work and time shaving as described above.
11 Furthermore, MONTANEZ FARMS failed to include bonuses/incentive payments/shift
12 differentials in calculating Plaintiff’s and other employees’ regular rate of pay for use in
13 deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and
14 bonus payments were also not factored into Plaintiff’s and other employees’ regular rate for
15 purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

16 24. MONTANEZ FARMS also violated Labor Code § 226.7 and the appropriate
17 Industrial Welfare Commission Wage Order nos. 8/13/14 because it failed to provide Plaintiff
18 and other Class Members with 10-minute rest periods for every four hours of work, or majority
19 portion thereof, throughout their employment. MONTANEZ FARMS did not completely relieve
20 Plaintiff and other Class Members of all duty during said rest periods. MONTANEZ FARMS
21 did not pay to Plaintiff and other Class Members one additional hour of pay at Plaintiff’s regular
22 rate of compensation for each workday that one or more statutory rest periods was not provided.
23 Plaintiff did not always get 2 uninterrupted rest breaks per shift. Rest breaks were not consistently
24 enforced, and it was simply not company policy for employees such as Plaintiff to take multiple,
25 uninterrupted, and timely rest breaks per day. As such, the culture as well as the policies and
26 procedures of MONTANEZ FARMS did not lend itself to the employees receiving consistent
27 statutory rest breaks wherein they were relieved of all work duties. The environment at
28

1 MONTANEZ FARMS was not conducive to receiving statutory rest breaks under California law
2 and timely, statutory rest breaks were not authorized or enforced.

3 25. MONTANEZ FARMS violated Labor Code §§ 512 and 226.7 and the appropriate
4 Industrial Welfare Commission Wage Order (nos. 8/13/14) because it failed to provide hourly,
5 non-exempt employees, including Plaintiff and other Class Members, the requisite 30-minute,
6 uninterrupted meal periods for every five (5) hours of work throughout their employment.
7 MONTANEZ FARMS did not completely relieve Plaintiff and other employees of all duty
8 during said meal periods. MONTANEZ FARMS did not pay to Plaintiff and its hourly, non-
9 exempt employees one additional hour of pay at their regular rate of compensation for each
10 workday that one or more statutory meal periods was not provided. Receiving a consistent thirty-
11 minute, uninterrupted and timely meal break was not part of the company culture and was not
12 enforced by MONTANEZ FARMS. In fact, there were numerous occasions wherein Plaintiff's
13 meal breaks were late and after the 5th hour worked, as Plaintiff and other Class Members had to
14 get permission in order to even begin their meal period. Moreover, Plaintiff did not himself clock
15 in and out for any meal period. As such, once again, Plaintiff had no control over making sure
16 that any clock in and clock out entries by the foreman were true and accurate or whether they
17 were done in a way to show compliance with California law on paper, even if that differed from
18 reality. Consequently, it was the normal practice and custom of MONTANEZ FARMS not to
19 authorize, permit, and enforce timely statutory meal periods. If MONTANEZ FARMS had
20 Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and other
21 Class Members generally worked more than a 5-hour shift. Furthermore, under California law,
22 employees must make an affirmative decision every day regarding whether to waive their meal
23 periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not,
24 therefore, be based on a specific requirement of the employer or on a policy or practice which
25 could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of
26 meal periods ... whether written or oral, will not be considered valid."). If MONTANEZ FARMS
27 had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through
28 the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does

1 not and did not prevent him from taking a meal period and the company could have hired
2 “breakers” to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted
3 meal period. Moreover, any such “on duty” meal period agreement did not allow for Plaintiff to
4 revoke such an agreement even if it was signed. As such, Plaintiff and other Class Members did
5 not always receive statutory, timely meal periods during their employment. To the extent that
6 MONTANEZ FARMS argues that employees receive meal break premium pay for missed meal
7 periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties
8 are for the violations themselves, irrespective of whether an employee received the premium
9 payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*,
10 the Court stated, “section 226.7 does not give employers a lawful choice between
11 providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire*
12 *Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay
13 does not excuse the violation; the employer has still committed a violation even if the remedy for
14 the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL
15 1110302 at *4). As such, the work environment and culture at MONTANEZ FARMS was not
16 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,
17 any meal or rest break premiums paid for Plaintiff and other employees were not compensated at
18 the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as
19 overtime compensation.

20 26. Furthermore, during the relevant time period, and due to the above labor code
21 violations, MONTANEZ FARMS failed to pay Plaintiff and other Class Members all wages due
22 to them within any time period specified by California Labor Code section 204. Since Plaintiff
23 was not compensated for his “off the clock” work and overtime, and since Plaintiff did not receive
24 proper meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor
25 Code Section 204. MONTANEZ FARMS was also in violation of California Labor Code section
26 226(a) by failing to include pertinent information on the wage statements provided to Plaintiff
27 and other Class Members, including but not limited to, the correct hourly rate, all hours worked,
28 overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium

1 pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period,
2 all employee identifying information, the correct and complete name and address of the legal
3 employer, and reimbursement for business expenses, among other Class Members. As such,
4 MONTANEZ FARMS did not provide Plaintiff and other Class Members with complete,
5 accurate itemized wage statements.

6 27. During the relevant time period, MONTANEZ FARMS also failed to keep
7 accurate and complete payroll records showing the actual hours worked per day and the wages
8 paid to Plaintiff and other Class Members pursuant to California Labor Code sections 1174(d).

9 28. MONTANEZ FARMS also violated Labor Code § 203 because it willfully failed
10 to pay other Class Members earned and due wages upon separation of employment, either
11 immediately upon involuntary termination, or within 72 hours of resignation. These earned but
12 unpaid wages include compensation for all hours worked, including minimum wages, overtime
13 compensation, and premium pay for missed meal and rest breaks.

14 29. During the relevant time period, Plaintiff and other Class Members incurred
15 necessary, business-related expenses and costs that were not reimbursed by MONTANEZ
16 FARMS. These costs include, but are not limited to, uniforms and cell phone for work purposes
17 in that Plaintiff would be contacted by the foreman on his cell phone regarding work-related
18 issues. Accordingly, MONTANEZ FARMS was in violation of California Labor Code sections
19 2800 and 2802.

20 30. Furthermore, MONTANEZ FARMS did not provide proper and correct/accurate
21 sick pay (inclusive of all bonuses/shift differentials/incentive payments) to Plaintiff and other
22 Class Members that was also delineated on employee pay stubs and also failed to provide proper
23 sick leave in violation of Labor Code sections 233 and 246. Moreover, there was no suitable
24 seating and resting facilities for Plaintiff and other Class Members pursuant to IWC Wage Order
25 nos. 8-2001/13-2001/14-2001.

26 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
27 unlawful practices and policies, Plaintiff and the Class Members were:

28 A. Not provided with all off duty meal periods;

- 1 B. Not authorized and permitted to take all rest break periods;
- 2 C. Not paid one hour's pay for each workday in which Defendants failed to
- 3 authorize and permit them to take one or more timely rest periods;
- 4 D. Not paid one hour's pay for each workday in which Defendants failed to
- 5 provide them with one or more timely meal periods;
- 6 E. Not paid all wages earned, including, but not limited to, minimum, regular,
- 7 overtime, and doubletime wages;
- 8 F. Not indemnified for all necessary business expenditures incurred during
- 9 the discharge of their duties;
- 10 G. Not provided with accurate and complete wage statements;
- 11 H. Not timely paid all earned and unpaid wages at the time their employment
- 12 ended.
- 13 I. Not provided with accurate sick pay; and
- 14 J. Not provided with suitable seating.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REST BREAKS**

17 **(Lab. Code §§ 226.7 and 1198)**

18 **(By Plaintiff and the Class against all Defendants)**

- 19 32. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.
- 20 33. At all relevant times during the applicable limitations period, Plaintiff and the
- 21 class have been employees of Defendants and entitled to the benefits and protections of
- 22 California Labor Code §§ 226.7, 1198, and the Wage Orders.

23 34. Labor Code § 1198 states,

24 "The maximum hours of work and the standard conditions of labor fixed

25 by the commission shall be the maximum hours of work and the standard

26 conditions of labor for employees. The employment of any employee for

longer hours than those fixed by the order or under conditions of labor

prohibited by the order is unlawful."

27 35. In relevant part, Section 12 of the Wage Orders states:

28 Rest Periods:

- (A) Every employer shall authorize and permit all employees

1 to take rest periods, which insofar as practicable shall be in the
2 middle of each work period. The authorized rest period time shall
3 be based on the total hours worked daily at the rate often (10)
4 minutes net rest time per four (4) hours or major fraction thereof.
5 However, a rest period need not be authorized for employees
6 whose total daily work time is less than three and one-half (3 1/2)
7 hours. Authorized rest period time shall be counted as hours
8 worked for which there shall be no deduction from wages.

9 (B) If an employer fails to provide an employee a rest period
10 in accordance with the applicable provisions of this Order, the
11 employer shall pay the employee one (1) hour of pay at the
12 employee's regular rate of compensation for each work day that
13 the rest period is not provided.

14 36. In addition, Labor Code Section 226.7 states

15 (b) An employer shall not require an employee to work during a meal
16 or rest or recovery period mandated pursuant to an applicable statute, or
17 applicable regulation, standard, or order of the Industrial Welfare
18 Commission, the Occupational Safety and Health Standards Board, or the
19 Division of Occupational Safety and Health.

20 (c) If an employer fails to provide an employee a meal or rest or
21 recovery period in accordance with a state law, including, but not limited
22 to, an applicable statute or applicable regulation, standard, or order of the
23 Industrial Welfare Commission, the Occupational Safety and Health
24 Standards Board, or the Division of Occupational Safety and Health, the
25 employer shall pay the employee one additional hour of pay at the
26 employee's regular rate of compensation for each workday that the meal
27 or rest or recovery period is not provided.

28 37. Pursuant to the Wage Orders, Plaintiff and the Class were entitled to be provided
with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction
thereof.

38. Defendants failed to provide Plaintiff with all required rest breaks in accordance
with the Wage Orders. Plaintiff and the Class Members did not take timely, uninterrupted rest
breaks of at least two per day wherein they were relieved of all duty. It was not company policy
and not part of the culture for employees such as Plaintiff and the Class Members to take
uninterrupted rest breaks since it was the normal practice and custom of Defendants not to
authorize, permit, and enforce statutory rest periods. Plaintiff is informed and believes and

1 thereon alleges that, at relevant times within the applicable limitations period, Defendants had
2 a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with
3 all rest breaks required by California law.

4 39. Defendants failed to pay Plaintiff the additional wages required by California
5 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes
6 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
7 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
8 providing the class with additional wages for all rest breaks not provided to them as required by
9 California Labor Code § 226.7.

10 40. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
11 damages in amounts subject to proof to the extent they were not paid additional wages owed for
12 all rest breaks not provided to them.

13 41. By reason of the above, Plaintiff and the members of the class are entitled to
14 premium wages for workdays in which one or more rest breaks were not provided to them
15 pursuant to California Labor Code § 226.7.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

18 **(Lab. Code §§ 226.7, 512, and 1198)**

19 **(By Plaintiff and the Class against all Defendants)**

20 42. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 43. At all relevant times during the applicable limitations period, Plaintiff and the
22 class have been employees of Defendants and entitled to the benefits and protections of
23 California Labor Code §§ 226.7, 512 and 1198, and the Wage Orders.

24 44. Labor Code § 1198 states,

25 "The maximum hours of work and the standard conditions of labor fixed
26 by the commission shall be the maximum hours of work and the standard
27 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful."

28 45. In relevant part, Labor Code Section 512 states

1 “An employer may not employ an employee for a work period of more
2 than five hours per day without providing the employee with a meal
3 period of not less than 30 minutes, except that if the total work period per
4 day of the employee is no more than six hours, the meal period may be
5 waived by mutual consent of both the employer and employee. An
6 employer may not employ an employee for a work period of more than
7 10 hours per day without providing the employee with a second meal
8 period of not less than 30 minutes, except that if the total hours worked
9 is no more than 12 hours, the second meal period may be waived by
10 mutual consent of the employer and the employee only if the first meal
11 period was not waived.”

12 46. In relevant part, Section 11 of the Wage Orders states:

13 Meal Periods:

14 (A) No employer shall employ any person for a work period of more
15 than five (5) hours without a meal period of not less than 30
16 minutes, except that when a work period of not more than six (6)
17 hours will complete the day’s work the meal period may be
18 waived by mutual consent of the employer and the employee...

19 (B) If an employer fails to provide an employee a meal period in
20 accordance with the applicable provisions of this order, the
21 employer shall pay the employee one (1) hour of pay at the
22 employee’s regular rate of compensation for each workday that
23 the meal period is not provided.

24 47. Pursuant to California Labor Code § 512 and the Wage Orders, Plaintiff and the
25 class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for
26 each day they worked five or more hours. Pursuant to California Labor Code § 512, they were
27 also entitled to a second 30-minute meal period when they worked more than ten (10) hours in
28 a workday.

48. During the relevant time period, Defendants failed to provide Plaintiff and the
Class Members with timely, off-duty meal periods in accordance with California Labor Code §
512 and the Wage Orders. Plaintiff and the Class Members would receive their meal breaks
after the 5th hour worked or they would be interrupted during their breaks. It was common for
Plaintiff’s supervisors to interrupt Plaintiff and the Class Members to ask questions about work
or give instructions, which happened often. Moreover, Defendants had no policy in place
regarding keeping track of whether employees such as Plaintiff and the Class Members were

1 receiving timely, uninterrupted meal periods.

2 49. Plaintiff is informed and believes and thereon alleges that, at relevant times
3 within the applicable limitations period, Defendants maintained a policy, practice, or a lack of
4 a policy which resulted in Defendants not providing Plaintiff and the class with all timely meal
5 periods required by California Labor Code § 512 and the Wage Orders.

6 50. Defendants failed to pay Plaintiff the additional wages required by California
7 Labor Code § 226.7 for all meal periods not provided to him. Plaintiff is informed and believes
8 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
9 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
10 providing the class with additional wages for all meal periods not provided to them as required
11 by California Labor Code § 226.7.

12 51. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
13 damages in amounts subject to proof to the extent they were not paid additional wages owed for
14 all meal periods not provided to them.

15 52. By reason of the above, Plaintiff and the members of the class are entitled to
16 premium wages for workdays in which one or more meal periods were not provided to them
17 pursuant to California Labor Code § 226.7.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

20 **(Lab. Code §§ 1194, 1197, and 1198)**

21 **(Plaintiff and the Class against Defendants)**

22 53. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

23 54. At all relevant times, Plaintiff and the other Class Members have been non-exempt
24 employees of Defendants and entitled to the benefits and protections of California Labor Code
25 sections 1194, 1197, and 1198 and the Wage Orders.

26 55. Section 2 of the Wage Orders define "hours worked" as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so."

1 56. Section 4 of the Wage Orders requires an employer to pay non-exempt employees
2 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
3 an employer has actual or constructive knowledge that employees are working.

4 57. Labor Code section 1194 invalidates any agreement between an employer and an
5 employee to work for less than the minimum wage required under the applicable Wage Orders.

6 58. Labor Code section 1197 makes it unlawful for an employer to pay an employee
7 less than the minimum wage required under the applicable Wage Orders for all hours worked
8 during a payroll period.

9 59. Labor Code section 1198 makes it unlawful for an employer to employ an
10 employee under conditions that violate the Wage Orders.

11 60. In conjunction, these provisions of the Labor Code require employers to pay non-
12 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
13 worked, including unrecorded hours when the employer knew or reasonably should have known
14 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
15 Cal.4th 575, 585.)

16 61. At all relevant times, Defendants did not provide Plaintiff and the Class Members
17 with the minimum wages to which they were entitled for all work performed. Plaintiff and the
18 Class Members were not paid for all hours worked, because the company would routinely time
19 shave and round down hours to the detriment of the employees, which would translate into
20 employees not getting paid for all hours worked in contravention of California's minimum wage
21 laws. Furthermore, employees such as Plaintiff did not control their clock in and clock out as
22 foreman would punch in and punch out employees. Moreover, to the extent Plaintiff and the Class
23 Members worked through their meal periods or their meal periods were interrupted by work
24 obligations, Plaintiff and the Class Members did not receive compensation for all hours worked
25 in violation of California's minimum wage laws.

26 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
27 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
28 failure to compensate Plaintiff and the other Class Members minimum wages for all hours

1 worked as required by California law.

2 63. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
3 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
4 the minimum wages earned during each pay period during the applicable limitations period.

5 64. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class
6 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
7 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
8 subject to proof.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PAY OVERTIME WAGES**

11 **(Lab. Code §§ 510, 1194, and 1198)**

12 **(Plaintiff and the Class against Defendants)**

13 65. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

14 66. At all relevant times, Plaintiff and the other Class Members have been non-exempt
15 employees of Defendants and entitled to the benefits and protections of California Labor Code
16 sections 510, 1194, and 1198 and the Wage Orders.

17 67. Section 3 of the Wage Orders states:
18 (A) Daily Overtime - General Provisions

19 (1) The following overtime provisions are applicable to employees 18 years of
20 age or over and to employees 16 or 17 years of age who are not required by law
21 to attend school and are not otherwise prohibited by law from engaging in the
22 subject work. Such employees shall not be employed more than eight (8) hours in
23 any workday or more than 40 hours in any workweek unless the employee
24 receives one and one-half (1 ½) times such employee's regular rate of pay for all
25 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
a day's work. Employment beyond eight (8) hours in any workday or more than
26 six (6) days in any workweek is permissible provided the employee is
27 compensated for such overtime at not less than:

28 (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours
worked in excess of eight (8) hours up to and including 12 hours in any workday,
and for the first eight (8) hours worked on the seventh (7th) consecutive day of
work in a workweek.

1 (b) Double the employee's regular rate of pay for all hours worked in excess of
2 12 hours in any workday and for all hours worked in excess of eight (8) hours on
the seventh (7th) consecutive day of work in a workweek.

3 (c) The overtime rate of compensation required to be paid to a nonexempt full-
4 time salaried employee shall be computed by using the employee's regular hourly
5 salary as one-fortieth (1/40) of the employee's weekly salary.

6 68. Labor Code section 510 states:

7 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
8 in one workday and any work in excess of 40 hours in any one workweek and the
9 first eight hours worked on the seventh day of work in any one workweek shall
10 be compensated at the rate of no less than one and one-half times the regular rate
11 of pay for an employee. Any work in excess of 12 hours in one day shall be
12 compensated at the rate of no less than twice the regular rate of pay for an
13 employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate
of pay of an employee. Nothing in this section requires an employer to combine
more than one rate of overtime compensation in order to calculate the amount to
be paid to an employee for any hour of overtime work.

14 69. Labor Code section 1194 invalidates any agreement between an employer and an
15 employee to work for less than the minimum wage required under the applicable Wage Orders.

16 70. Labor Code section 1198 makes it unlawful for an employer to employ an
17 employee under conditions that violate the Wage Orders.

18 71. In conjunction, these provisions of the Labor Code require employers to pay non-
19 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
20 worked, including unrecorded hours when the employer knew or reasonably should have known
21 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

22 72. At all relevant times, Defendants required Plaintiff and the Class Members to
23 perform "off the clock". As such, Plaintiff and the Class Members often worked more than eight
24 (8) hours per day and more than forty (40) hours per week. Defendants, however, failed to pay
25 Plaintiff and the other Class Members for this off-the-clock work, and failed to compensate them
26 at one and one-half times their respective regular rates of pay for all overtime hours worked.
27 Moreover, despite providing bonuses and other incentive payments, Defendants did not factor in
28 those payments in calculating employees' correct regular rate of pay in order to then calculate

1 the correct overtime rate of pay.

2 73. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
4 failure to compensate Plaintiff and the other Class Members for all overtime hours worked as
5 required by California law.

6 74. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
7 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
8 the full amount of overtime wages earned during each pay period during the applicable limitations
9 period.

10 75. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class
11 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of
12 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts
13 subject to proof.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO INDEMNIFY**

16 **(Lab. Code §§ 1198 & 2802)**

17 **(Plaintiff and the Class against all Defendants)**

18 76. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 77. At all relevant times, Plaintiff and the Class Members have been non-exempt
20 employees of Defendants and entitled to the benefits and protections of the California Labor Code
§§ 1198 and 2802 and the Wage Orders.

21 78. In pertinent part, California Labor Code § 2802(a) states:

22 "An employer shall indemnify his or her employee[s] for all
23 necessary expenditures incurred by the employee in direct
24 consequence of the discharge of his or her duties."

25 79. Section 9(B) of the Wage Orders states:

26 When tools or equipment are required by the employer or are
27 necessary to the performance of a job, such tools and equipment
28 shall be provided and maintained by the employer, except that an
employee whose wages are at least two (2) times the minimum
wage provided herein may be required to provide and maintain

1 hand tools and equipment customarily required by the trade or
2 craft.

3 80. California Labor Code § 1198 prohibits employers from employing their
4 employees under conditions prohibited by the Wage Orders.

5 81. At all relevant times, as a condition for employment, Defendants required Plaintiff
6 and the Class Members to incur business expenses. These costs include, but are not limited to,
7 uniforms and cell phone for work purposes in that Plaintiff would be contacted by the foreman
8 on his cell phone regarding work-related issues. Defendants, however, failed to
9 reimburse Plaintiff and the Class Members for these required business expenses.

10 82. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
11 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
12 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
13 during the course of performing their duties.

14 83. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
15 Members are entitled to reimbursement for all necessary expenditures and losses and interest
16 thereon, due and owing to them within four years of the date of the filing of the Complaint until
17 the entry of judgment.

18 84. Accordingly, with respect to this cause of action, on behalf of himself and the
19 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys'
20 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

23 **(Lab. Code § 226)**

24 **(Plaintiff and the Class against all Defendants)**

25 85. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

26 86. At all relevant times during the applicable limitations period, Plaintiff and the
27 other Class Members have been employees of Defendants and entitled to the benefits and
28 protections of California Labor Code section 226.

1 87. Pursuant to California Labor Code section 226(a), Plaintiff and the other class
2 members were entitled to receive, biweekly or at the time of each payment of wages, an accurate
3 itemized statement showing:

- 4 (1) Gross wages earned,
- 5 (2) Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 8 (3) The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis,
- 10 (4) All deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item,
- 12 (5) Net wages earned,
- 13 (6) The inclusive dates of the period for which the employee is paid,
- 14 (7) The name of the employee and his or her social security number, except
15 that by January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the itemized
17 statement,
- 18 (8) The name and address of the legal entity that is the employer, and
- 19 (9) All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 88. Pursuant to California Labor Code section 226(e), an employee suffering injury as
22 a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
23 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
24 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
25 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
26 is entitled to an award of costs and reasonable attorneys' fees.

27 89. Pursuant to California Labor Code section 226(e), an employee is deemed to suffer
28 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer

1 injury if the employer fails to provide accurate and complete information as required by California
2 Labor Code section 226(a) and the employee cannot “promptly and easily determine” from the
3 wage statement alone one or more of the following:

4 A. The amount of the gross wages or net wages paid to the employee during
5 the pay period or any of the other information required to be provided on the itemized wage
6 statement pursuant to California Labor Code section 226(a);

7 B. Which deductions the employer made from gross wages to determine the
8 net wages paid to the employee during the pay period;

9 C. The name and address of the employer and, if the employer is a farm labor
10 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
11 and address of the legal entity that secured the services of the employer during the pay period;
12 and

13 D. The name of the employee and only the last four digits of his or her social
14 security number or an employee identification number other than a social security number.

15 90. “Promptly and easily determine,” as stated in California Labor Code section
16 226(e), means a reasonable person would be able to readily ascertain the information without
17 reference to other documents or information.

18 91. As alleged herein, Defendants failed to provide Plaintiff and the other class
19 members with all meal and rest periods in compliance with California law. They also failed to
20 provide them with premium wages on workdays they failed to provide them with one or more
21 meal and/or rest periods in compliance with California law. Further, Defendants failed to
22 compensate Plaintiff and the other Class Members for all hours worked. As a result, Defendants
23 have failed to properly itemize Plaintiff and the other Class Members’ gross and net wages earned,
24 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
25 rate, and other requirements of California Labor Code § 226. As a result, Defendants have violated
26 California Labor Code § 226.

27 92. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
28 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and

1 the other Class Members with accurate wage statements but intentionally provided wage
2 statements that Defendants knew were not accurate.

3 93. As a result of being provided with inaccurate wage statements by Defendants,
4 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
5 wage statements were violated and they were misled about the amount of wages they had actually
6 earned and were owed. In addition, the absence of accurate information on their wage statements
7 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
8 and mathematical computations to determine the amounts of wages owed, has caused difficulty
9 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
10 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
11 and the other Class Members were not able to ascertain from the wage statements whether
12 Defendants complied with their obligations under California Labor Code section 226(a).

13 94. Pursuant to California Labor Code section 226(e), Plaintiff and the other class
14 members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
15 for the initial pay period in which a violation of California Labor Code section 226(a) occurred
16 and one hundred dollars for each violation of California Labor Code section 226(a) in a
17 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
18 Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

19 95. Accordingly, with respect to this cause of action, on behalf of himself and the other
20 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
21 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
22 proof.

23 **SEVENTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(Lab. Code §§ 201-203)**

26 **(Plaintiff and the Class against all Defendants)**

27 96. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

28 97. At all relevant times during the applicable limitations period, Plaintiff and the

1 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
2 of California Labor Code sections 201 to 203 and the Wage Orders.

3 98. Labor Code section 201 provides that all earned and unpaid wages of an employee
4 who is discharged are due and payable immediately at the time of discharge.

5 99. Labor Code section 202 provides that all earned and unpaid wages of an employee
6 who quits after providing at least 72-hours notice before quitting are due and payable at the time
7 of quitting and that all earned and unpaid wages of an employee who quits without providing at
8 least 72-hours notice before quitting are due and payable within 72 hours.

9 100. By failing to pay all earned minimum, regular, overtime, and premium wages to
10 Plaintiffs and the class as described above, Defendants failed to timely pay Plaintiff and the class
11 all earned and unpaid wages in violation of Labor Code section 201 or 202.

12 101. Plaintiff is informed and believes that Defendants' failures to timely pay all final
13 wages to them and the class members have been willful in that Defendants have the ability to pay
14 final wages in accordance with Labor Code sections 201 and 202 but have intentionally adopted
15 policies or practice that are incompatible with those requirements.

16 102. Labor Code section 203 provides that the wages of an employee continue on a
17 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
18 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

19 103. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
20 and the class all of their earned and unpaid wages have been willful in that, at all relevant times,
21 Defendants have deliberately maintained policies and practices that violate the requirements of
22 the Labor Code and the Wage Orders even though, at all relevant times, they have had the ability
23 to comply with those legal requirements.

24 104. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on
25 behalf of himself and the Class Members, in amounts subject to proof not to exceed 30 days of
26 waiting time penalties for each class member.

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

3 **(Lab. Code §§ 204)**

4 **(Plaintiff and the Class against all Defendants)**

5 105. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

6 106. California Labor Code Section 204 establishes the fundamental right of all
7 employees in the State of California to be paid wages in a timely fashion for their work.

8 107. At all times relevant during the liability period, Defendants failed to pay
9 Plaintiff and the Class Members the full amount of all owed wages when due as required by
10 California Labor Code Section 204.

11 108. Defendants failed to pay Plaintiff and the Class Members all wages earned each
12 pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the
13 liability period, Defendants maintained a policy or practice of not paying Plaintiff and the Class
14 Members wages for all hours worked, including overtime hours and premium pay for missed rest
15 breaks and meal breaks.

16 109. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
17 have suffered damages in an amount, subject to proof, to the extent he was not paid all wages
18 each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can
19 be determined directly from Defendants' records or indirectly based on information from
20 Defendants' records.

21 110. Under this cause of action, Plaintiff prays for penalties on behalf of himself and
22 Class Members due under the statutes alleged along with any allowable interest, penalties,
23 attorney's fees, and costs according to proof at trial.

24 **NINTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(Bus. & Prof. Code §§ 17200, et seq.)**

27 **(Plaintiff and the Class against all Defendants)**

28 111. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

1 112. At all relevant times during the applicable limitations period, Plaintiff and the
2 other Class Members have been employees of Defendants and entitled to the benefits and
3 protections of the Business and Professions Code sections 17200, et seq.

4 113. The unlawful conduct of Defendants alleged herein amounts to and constitutes
5 unfair competition within the meaning of California Business & Professions Code sections 17200,
6 et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
7 unfairly gained a competitive advantage over other comparable companies doing business in
8 California that comply with their legal obligations to, among other things, pay their employees
9 premium wages for workdays in which they did not provide employees with one or more meal
10 and rest periods, reimburse their employees for reasonable expenses incurred during the course
11 of performing their duties, provide suitable seating for their employees, provide paid sick leave
12 to their employees, and pay their employees all earned wages for all minimum, regular, and
13 overtime hours worked at the correct rates of pay. Defendants have violated California Labor
14 Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1198, and
15 2802.

16 114. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
17 other Class Members have suffered injuries in fact and lost money or property. Defendants
18 deprived Plaintiff and the other Class Members of minimum, overtime, and premium wages and
19 reimbursement for expenses that Plaintiff and the other Class Members incurred during the course
20 of performing their duties.

21 115. Pursuant to California Business & Professions Code section 17203, Plaintiff and
22 the other Class Members are entitled to restitution of all monies rightfully belonging to them that
23 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
24 and unfair business practices.

25 116. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
26 connection with their unfair competition claims pursuant to California Code of Civil Procedure
27 section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

28 ///

1 **TENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER PAGA**

3 **(By Plaintiff and the Class against all Defendants)**

4 117. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

5 118. The “Aggrieved Employees” are all members of the class defined above who
6 Defendants employed during the period beginning August 9, 2023 and ending on the date that
7 final judgment is entered in this action.

8 119. Labor Code § 204 states

9 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
10 or 204.2, earned by any person in any employment are due and payable twice
11 during each calendar month, on days designated in advance by the employer as the
12 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
13 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. ...

14 (b) (1) Notwithstanding any other provision of this section, all wages
15 earned for labor in excess of the normal work period shall be paid no later than the
payday for the next regular payroll period.

16 (2) An employer is in compliance with the requirements of subdivision (a) of
17 Section 226 relating to total hours worked by the employee, if hours worked in
18 excess of the normal work period during the current pay period are itemized as
19 corrections on the paystub for the next regular pay period. Any corrections set out
20 in a subsequently issued paystub shall state the inclusive dates of the pay period
for which the employer is correcting its initial report of hours worked.

21 (c) However, when employees are covered by a collective bargaining
22 agreement that provides different pay arrangements, those arrangements shall
apply to the covered employees.

23 (d) The requirements of this section shall be deemed satisfied by the payment
24 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
25 more than seven calendar days following the close of the payroll period.

26 120. Defendants paid wages to employees on regular intervals. Defendants failed to pay
27 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
28 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
all wages earned and all hours worked.

1 121. During the applicable time period, Defendants violated California Labor Code §§
2 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802
3 and the Wage Orders.

4 122. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
5 behalf of himself or himself and other current or former employees, to bring a civil action to
6 recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

7 123. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
8 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
9 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and
2802 during the applicable limitations period in the following amounts:

10 A. For violations of California Labor Code § 204, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
12 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
13 (penalty amounts established by California Labor Code § 210).

14 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
15 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
16 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
California Labor Code § 226.3).

17 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
18 dollars (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars
19 (\$100.00) for each Aggrieved Employee for each subsequent violation per pay period (penalty
20 amounts established by California Labor Code § 558).

21 D. For violations of California Labor Code § 1174, five hundred dollars
22 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
California Labor Code § 1174.5).

23 E. For violations of California Labor Code § 1197, one hundred dollars
24 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
25 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation per pay period
26 (regardless of whether the initial violations were intentionally committed) (penalty amounts
27 established by California Labor Code § 1197.1).

28 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233, 246,

1 1194,1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
2 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per
3 pay period for each subsequent violation (penalty amounts established by California Labor Code
4 § 2699(f)(2)).

5 124. Plaintiff has complied with the procedures for bringing suit specified in California
6 Labor Code § 2699.3. By a letter dated August 9, 2024, Plaintiff filed written notice online with
7 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
8 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
9 violated, including the facts and theories to support the alleged violations. Plaintiff accompanied
10 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
11 response within 65 calendar days of the date of Plaintiff’s notice.

12 125. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
13 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
14 connection with their claims for civil penalties.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
17 relief and judgment against Defendants as follows:

- 18 A. An order that the action be certified as a class action;
- 19 B. An order that Plaintiff be appointed class representative;
- 20 C. An order that counsel for Plaintiff be appointed class counsel;
- 21 D. Unpaid Wages;
- 22 E. Actual Damages;
- 23 F. Statutory Damages;
- 24 G. Liquidated Damages;
- 25 H. Restitution;
- 26 I. Declaratory and injunctive relief;
- 27 J. Equitable relief;
- 28 K. Pre-judgment interest;
- L. Statutory penalties;
- M. Civil penalties;
- N. Costs of suit;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: January 13, 2025

By Maralle Messrelian
HAROUT MESSRELIAN
MARALLE MESSRELIAN, Of Counsel
Attorneys for Plaintiff, RAYMUNDO LOPEZ,
and all others similarly situated