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11 *situated*

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN BERNARDINO**
14 **CIVIL JUSTICE CENTER**

15 JOSE MARCELO RIVERA, individually, and
16 on behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 PB INDUSTRY, INC., a California
20 corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

CASE NUMBER: CIVSB2434800

CLASS ACTION COMPLAINT

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Provide Recovery Periods
4. Failure to Pay Overtime Wages
5. Failure to Pay Minimum Wages
6. Failure to Pay Timely Wages
7. Failure to Pay All Wages Due to Discharged and Quitting Employees
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Maintain Required Records
10. Failure to Maintain Records and Provide Supplemental COVID-19 Sick Leave
11. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
12. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

13. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 This is a Class and Representative Action brought by Jose Marcelo Rivera, individually
2 and on behalf of all others similarly situated (“Plaintiff”), relating to systemic violations of
3 California wage and hour laws by his former employer, PB Industry, Inc. (referred to as “PB” or
4 “Defendant”). Plaintiff makes the following allegations on information and belief, except as to
5 allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

6 **INTRODUCTION**

7 1. As private, for-profit businesses, Defendant has implemented common policies and
8 practices that have resulted in systemic violations of California’s wage and hour laws.

9 2. Defendant maximized profits by cutting labor costs, grossly understaffing its
10 facilities and warehouse, denying meal and rest breaks, systematically requiring off-the-clock
11 work, cheating their employees out of minimum and overtime wages by implementing unlawful
12 rounding practices; and not paying premium payments for noncompliant meal and rest periods.

13 3. Defendant has implemented unlawful written policies with respect to meal and
14 rest breaks. Defendant also requires its non-exempt employees, who are informed that the needs
15 of the businesses take top priority, to work through meal and rest breaks, to take untimely meal
16 periods and to remain on call during such breaks. As a result, Plaintiff and other non-exempt,
17 hourly employees have been denied the ability to take the meal and rest breaks that they were
18 and are legally entitled to take.

19 4. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
20 himself and a Class of all current and former non-exempt employees of Defendant during the
21 applicable limitations period to compensate these workers for the wages Defendant has stolen
22 from them and to protect current and future workers from being subjected to similar unlawful
23 working conditions perpetrated by Defendant.

24 **JURISDICTION AND VENUE**

25 5. The Superior Court of the State of California has jurisdiction in this matter
26 because Plaintiff is a resident of the State of California, and Defendant is licensed to do business
27 under the laws of the State of California.

28 6. Venue is proper in this judicial district and the County of San Bernardino because

1 Defendant maintains its office, facilities and warehouse, in the City of Ontario, the County of
2 San Bernardino. Plaintiff worked for Defendant in Ontario, California, a city located in the
3 County of San Bernardino, of the State of California. Many other non-exempt, hourly employees
4 also worked for Defendant in the County of San Bernardino.

5 7. Defendant employed Plaintiff and the other non-exempt, hourly employees within
6 the State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and
7 other hourly, non-exempt employees within the County of San Bernardino and this judicial
8 district.

9 **THE PARTIES**

10 9. Plaintiff is a citizen of the State of California and currently resides in San
11 Bernardino County. During the relevant time period, Plaintiff was employed by Defendant in the
12 warehouse assigned to work in the Shipping and Receiving Department.

13 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all
14 times relevant hereto was, a corporation organized and existing under the laws of the State of
15 California. Defendant is authorized to conduct business and does conduct business in the State of
16 California.

17 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
18 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
19 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
20 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
21 employer and/or joint employer of Plaintiff and the other aggrieved employees.

22 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
23 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy.
24 Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned
25 below was acting, at least in part, within the course and scope of that authority as such agent,
26 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
27 the permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each
28 Defendant are legally attributable to the other Defendants.

13. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

CLASS ACTION ALLEGATIONS

14. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of himself and the following Class (“Class Members”):

All current or former non-exempt, hourly-paid employees who worked for Defendant at anytime within the State of California during the statute of limitations period.

15. Plaintiff reserves the right to name additional Class representatives as may be necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the proposed Class and/or add subclasses before the Court determines whether certification is appropriate.

16. This action is appropriately suited for a class action because:

A. The proposed Class is a significant number. Plaintiff is informed and believes that the proposed Class consists of at least fifty (50) current and former non-exempt employees, rendering joinder impractical.

B. This action involves common questions of law and fact to the proposed Class because the action focuses on Defendant's systematic course of illegal payroll practices and policies, which was applied to all non-exempt employees in uniform violation of the California Labor Code, IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair business practices arising from such violations. Here are a few common questions of law and fact that will drive resolution of this action:

1. Whether Defendant failed to provide non-exempt employees with legally compliant meal periods and rest breaks, and whether Defendants properly paid premium pay at the appropriate regular rate as a result of missed and non-compliant meal periods and rest breaks;
2. Whether Defendant failed to timely pay wages to non-exempt employees in compliance with California law;
3. Whether Defendant's time rounding policy and practice is in violation of California law;
4. Whether Defendants failed to pay overtime and minimum wages to non-exempt employees in compliance with California law;
5. Whether Defendant failed to maintain required records and accurate wage statements for non-exempt employees;
6. Whether Defendant failed to pay non-exempt employees all wages due, for all hours worked, including for off-the-clock work, travel time, pre and post-shift work, and COVID screening;
7. Whether Defendant failed to pay split-shift and reporting time pay premium payments;
8. Whether Defendant failed to pay and maintain records relating to COVID-19 supplemental sick pay;
9. Whether Defendant engaged in unfair and/or unlawful business practices.

C. Plaintiff's claims are typical of the proposed Class because Defendant subjected all of its non-exempt employees to the similar and overlapping violations of the California Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

D. Plaintiff is able to fairly and adequately protect the interests of all members of the proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain full compensation due to the proposed Class for all services rendered and hours

1 worked. Plaintiff has also retained counsel that is experienced in wage and hour class action
2 litigation.

3 **FIRST CAUSE OF ACTION**
4 **Failure to Provide Required Meal Periods**
5 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and All Applicable IWC**
6 **Wage Orders and Applicable Sections]**
7 **(On Behalf of Plaintiff and the Class Against all Defendants)**

8 17. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 16 (A) – (D).

10 18. During the statute of limitations period, as part of Defendant’s unlawful policies
11 and practices to deprive their non-exempt employees of all wages earned and due, Defendant
12 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
13 their meal periods, to completely skip their meal periods, to take late and short meal periods,
14 auto-deducting meal periods, and Defendant has otherwise failed to provide the required meal
15 periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512,
16 and § 11 of the applicable IWC Order.

17 19. Moreover, Defendant interfered with and restricted the ability of Plaintiff and
18 Class members to take meal periods by requiring them to carry cell phones and walkie-talkies
19 during meal periods, and not permitting Plaintiff and the other Class members to leave their work
20 areas when taking meal periods.

21 20. Defendant has implemented several common policies and practices that have
22 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant
23 meal periods.

24 21. Defendant grossly understaff its warehouse such that Class members are given so
25 much work to complete that they regularly miss or take non-compliant meal periods. As a direct
26 consequence of this understaffing, Plaintiff and Class members have so much work to complete
27 within their scheduled shifts that they are forced to skip their meal periods altogether, to take
28 them after working longer than five (5) hours, to perform work during their meal periods, or
return to work after taking less than a thirty (30) minute meal period. Further, Defendant failed

1 to implement a meal period policy for work shifts longer than ten (10) hours or more.

2 22. Moreover, Defendant failed to implement adequate policies or procedures to
3 provide meal periods to the Class members. Among other things, Defendant overworked
4 Plaintiff and Class members and did not adequately advise them of their rights to take meal
5 periods, and systematically denied them the opportunity to take meal periods, including second
6 meal periods during shifts of ten hours or longer.

7 23. Defendant has also violated California Labor Code §§ 226.7, all applicable wage
8 orders and applicable sections, and the California Unfair Competition Law, Cal. Bus. & Prof.
9 Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not
10 authorized and permitted to take a complete, timely, uninterrupted meal period, in accordance
11 with the applicable wage order, one additional hour of compensation at the proper regular rate of
12 pay for each workday that such a meal period was not authorized or permitted.

13 24. Defendant further violated California Labor Code sections 226.7, 510, 1194,
14 1197, IWC Wage Order No. 1-2001, and all applicable IWC Wage Orders, by failing to
15 compensate Plaintiff and Class members for all hours worked during their meal periods.

16 25. As a proximate result of the aforementioned violations, Plaintiff and Class
17 members have been damaged in an amount according to proof at trial, and seek all wages earned
18 and due, interest, penalties, expenses, and costs of suit.

19 **SECOND CAUSE OF ACTION**

20 **Failure to Provide Required Rest Breaks**

21 **[Cal. Lab. Code §§ 226.7, 512; and All Applicable IWC Wage Orders
and Applicable Sections]**

22 **(On Behalf of Plaintiff and the Class Against all Defendants)**

23 26. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 25.

25 27. At all times relevant herein, as part of Defendant's illegal policies and practices to
26 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit
27 Plaintiff and Class members to take rest breaks as required under California Labor Code §§
28 226.7 and 512, and § 12 of the applicable IWC Wage Order.

1 28. As with meal periods, Defendant's policies and practices caused Plaintiff and
2 Class members to miss or otherwise take non-compliant rest periods by, among other things,
3 giving them unreasonable amounts of work that had to be completed within their shift such that
4 rest periods simply could not be taken. This was the result of systematic understaffing at the
5 warehouse. Further, as set forth above, Defendant implemented skeletal staffing policies, which
6 resulted in the inability of Plaintiff and Class members to take compliant rest periods. In
7 addition, Defendant did not adequately notify Plaintiff and Class members of their rights to take
8 rest periods, and systematically denied them the opportunity to take rest periods, including all
9 rest periods required during long shifts, which at times exceeded 12 consecutive hours.

10 29. Defendant further violated California Labor Code § 226.7, IWC Wage Order No.
11 1-2001, § 12, all other applicable IWC Wage Orders and the California Unfair Competition Law,
12 Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class members who
13 were not provided with a rest break, in accordance with the applicable wage order, one additional
14 hour of compensation at the proper regular rate of pay for each workday that a rest break was not
15 provided.

16 30. As a proximate result of the aforementioned violations, Plaintiff and Class
17 members have been damaged in an amount according to proof at trial, and seek all wages earned
18 and due, interest, penalties, expenses, and costs of suit.

19 **THIRD CAUSE OF ACTION**

20 **Failure to Provide Required Recovery Periods**

21 **[Cal. Lab. Code §§ 226.7; California Code of Regulations, Title 8, Section 3395]**

22 ***(On Behalf of Plaintiff and the Class against all Defendants)***

23 31. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 30.

25 32. At all times relevant herein, as part of Defendant's illegal payroll policies and
26 practices to deprive its non-exempt employees of all wages earned and due, Defendant failed to
27 permit Plaintiff and Class members to take recovery periods as required under Cal. Lab. Code §
28 226.7 and California Code of Regulations, Title 8, Section 3395. Defendant was and is required
to provide recovery or "cooldown" periods to non-exempt employees like Plaintiff and the Class

1 members while performing manual labor in order to prevent heat illness.

2 33. Plaintiff and Class members performing intense manual labor. This work is
3 performed over the course of many hours in temperatures regularly exceeding 86 degrees
4 Fahrenheit, and often over 100 degrees Fahrenheit. Despite these work conditions, Defendant has
5 failed to implement an adequate policy or practice of providing recovery periods to Plaintiff and
6 the Class members. Defendant has similarly failed to make efforts to comply with heat illness
7 prevention regulations by providing places of shade for recovery periods or by supplying
8 sufficient amounts of drinking water. For example, there are times when Defendant does not
9 provide Plaintiff and Class members with drinking water. As with meal and rest breaks,
10 Defendant did not provide Plaintiff and Class members with any written documents informing
11 them of their rights to take recovery periods, and thus they did not take them.

12 34. Defendant further violated Cal. Lab. Code §226.7, and the California Unfair
13 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class
14 members who were not provided with a recovery period, one additional hour of compensation at
15 the proper regular rate of pay for each workday that a recovery period was not provided.

16 35. As a proximate result of the aforementioned violations, Plaintiff and Class
17 members have been damaged in an amount according to proof at trial, and seek all wages earned
18 and due, interest, penalties, expenses and cost of suit.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Pay Overtime Wages**

21 **[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC Wage Orders
and Applicable Sections]**

22 **(On Behalf of Plaintiff and the Class against all Defendants)**

23 36. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 35.

25 37. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders
26 and applicable sections, Defendant is required to compensate Plaintiff and Class members for all
27 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
28 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first

1 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
2 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
3 on the seventh consecutive day of work in any workweek.

4 38. Plaintiff and Class members are current and former direct and temporary hourly
5 paid employees entitled to the protections of California Labor Code §§ 510, 1194, and all
6 applicable IWC Wage Orders. During the statute of limitations period, Defendant failed to
7 compensate Plaintiff and Class members for all overtime hours worked as required under the
8 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
9 methods: failing to pay any overtime compensation; failing to properly calculate the regular rate
10 of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or
11 suffering Plaintiff and Class members to work off-the-clock; illegally rounding time worked so
12 as to deprive Plaintiff and the Class members of wages; requiring, suffering, or permitting
13 Plaintiff and Class members to work through meal and rest periods but not compensating them
14 for this time, failing to include this time in all hours worked; failing to pay for travel time; failing
15 to pay the highest regular rate of pay based upon nondiscretionary bonus/commission payments;
16 failing to pay for training time; editing or otherwise manipulating the overtime hours worked,
17 failing to pay for pre-and post-shift work (including COVID screenings and donning and doffing
18 uniforms and safety equipment); and other methods to be discovered.

19 39. In a short-sighted attempt to maximize profits, Defendant has understaffed its
20 facilities an warehouse. Not only has this practice resulted in widespread missed meal and rest
21 breaks, but it has also caused Plaintiff and Class members to perform significant amounts of
22 work while off-the-clock. Defendant knows that Plaintiff and Class members perform this work
23 off-the-clock work because managers see them doing this work well before the beginning the
24 start of their scheduled shifts.

25 40. Defendant has also engaged in an unlawful time rounding practice, where the time
26 worked by Plaintiff and Class members is systematically rounded down, resulting in unpaid
27 regular and overtime ages. Defendant implemented a rounding practice wherein it rounds the
28 time worked by non-exempt employees to the nearest quarter-hour. Defendant pays Plaintiff and

1 Class members based on rounded time.

2 41. Plaintiff and Class members must get to work by no later than the start of their
3 shifts and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
4 minutes late. Likewise, Plaintiff and Class members are in a rush to complete their mandatory
5 job duties, so they are rarely afforded the benefit of clocking out early at the end of their shifts.
6 This results in widespread underpayment of time worked.

7 42. In violation of California law, Defendant has knowingly and willfully refused to
8 perform their obligations to compensate Plaintiff and Class members for all wages earned and all
9 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
10 members have suffered, and continue to suffer, substantial losses related to the use and
11 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
12 seeking to compel Defendant to fully perform their obligations under state law, all to their
13 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
14 this Court.

15 43. Defendant's conduct described herein violates California Labor Code §§ 510,
16 1194, 1198 and all applicable IWC Wage Orders and applicable sections. Therefore, pursuant to
17 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions
18 under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are
19 entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest,
20 penalties, attorneys' fees, expenses, and costs of suit.

21 **FIFTH CAUSE OF ACTION**
22 **Failure to Pay Minimum Wages**
23 **[Cal. Lab. Code §§ 1194, 1197; All Applicable IWC Wage Orders and Applicable Sections]**
24 **(On Behalf of Plaintiff and the Class against all Defendants)**

25 44. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in paragraphs 1 through 43.

27 45. Pursuant to Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders
28 and applicable sections, payment to an employee of less than the applicable minimum wage for
all hours worked in a payroll period is unlawful.

46. During the statute of limitations period, the hourly rates for Plaintiff and Class members were precisely at minimum wage. Based on this common practice, Defendant failed to actually pay Plaintiff and Class members minimum wages for all hours worked by requiring, permitting or suffering them to work off-the-clock, such as requiring them to work through meal, rest breaks, but not compensating them for this time, and failing to include this time in all hours worked, engaging in illegal and unlawful rounding and time entry manipulation practices, failing to pay for travel time, failing to pay for pre-and post-shift work (including COVID screenings and donning and doffing uniforms and safety equipment); and other methods to be discovered.

47. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders and applicable sections. As a proximate result of the aforementioned violations, Plaintiff and other Class members have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law, Plaintiff and the other Class members are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

SIXTH CAUSE OF ACTION
Failure to Pay Timely Wages
[Cal. Lab. Code §§ 204, 210]
(On Behalf of Plaintiff and the Class against all Defendants)

48. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 47.

49. California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

1 California Labor Code § 204 further provides that all wages eared for labor in excess of the
2 normal work period shall be paid no later than the payday for the next regular payroll period.

3 50. During the statute of limitations period, Defendant, among other things, willfully
4 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
5 limited to, meal and rest break premiums, and payment for work performed off-the-clock, within
6 any time period permissible under Labor Code § 204.

7 51. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
8 and Class members are entitled to all available statutory penalties, including but not limited to,
9 civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and
10 other applicable provisions under the California Labor Code and IWC Wage Orders, and an
11 award of costs, expenses, and reasonable attorneys' fees.

12 **SEVENTH CAUSE OF ACTION**
13 **Failure to Pay All Wages Due to Discharged and Quitting Employees**
14 **[Cal. Lab. Code §§ 201, 202, 203]**
(On Behalf of Plaintiff and the Class against all Defendants)

15 52. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 51.

17 53. Pursuant to California Labor Code §§ 200, 201, 202, and 203, Defendants are
18 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
19 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
20 and unpaid at the time of discharge are due and payable immediately.

21 54. Furthermore, pursuant to California Labor Code § 202, Defendants are required to
22 pay all accrued wages due to an employee no later than seventy-two (72) hours after the
23 employee quits his or her employment, unless the employee provided seventy-two (72) hours
24 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
25 wages at the time of quitting.

26 55. California Labor Code § 203 provides that if an employer willfully fails to pay, in
27 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
28 discharged or who quits, the employer is liable for waiting time penalties in the form of

1 continued compensation to the employee at the same rate for up to thirty (30) workdays.

2 54. During the statute of limitations period, Defendants have willfully failed to pay
3 accrued wages and other compensation to Plaintiff and Class members in accordance with
4 California Labor Code §§ 201 and 202. Defendants do not have a sufficient policy to provide
5 Plaintiff and Class members with their final paychecks within the timeframes required under
6 California law. In addition, because Defendants have failed and continue to fail to properly
7 compensate Plaintiff and Class members for all hours worked when due, overtime wages, and
8 compensation for non-compliant meal and rest breaks, Defendants have also willfully failed and
9 continues to fail to pay accrued wages and other compensation to Plaintiff and Class members in
10 accordance with California Labor Code §§ 201 and 202.

11 55. As a result, Plaintiff and Class members are entitled to all available statutory
12 penalties, including the waiting time penalties provided in California Labor Code § 203, together
13 with interest thereon, as well as other available remedies.

14 56. As a proximate result of Defendants unlawful actions and omissions, Plaintiff and
15 Class members have been deprived of compensation in an amount according to proof at the time
16 of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such
17 amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code
18 § 1194.

19 **EIGHTH CAUSE OF ACTION**

20 **Failure to Furnish Accurate Itemized Wage Statements**
21 **[Cal. Lab. Code §§ 226, 246, 248.1, 248.2 and 248.6; and All Applicable**
22 **IWC Wage Orders and Applicable Sections]**
23 **(On Behalf of Plaintiff and the Class against all Defendants)**

24 57. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in paragraphs 1 through 56.

26 58. During the statute of limitations period, Defendant routinely failed to provide
27 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
28 showing each employee's gross wages earned, total hours worked, all deductions made, net
wages earned, and all applicable hourly rates in effect during each pay period and the

1 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
2 § 226 and all applicable IWC Wage Orders and applicable sections.

3 59. Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the
4 applicable rates of pay for regular and overtime hours worked by Plaintiff and Class members,
5 and in violation of Labor Code §§246, 248.1, 248.2 and 248.6 based upon Defendant's failure to
6 include information related to COVID-19 supplemental sick pay. Further, Defendant's was and
7 is not providing Plaintiff and other Class members with proper meal periods and rest breaks but
8 intentionally fails to include in their wage statements one (1) additional hour of compensation at
9 their regular rates of pay for each non-compliant meal period or rest break which include but not
10 limited to, shift differentials, nondiscretionary bonuses, etc., failing to pay split shift and
11 reporting time premium payments, and failing to pay all wages due based upon Defendant's
12 illegal and unlawful rounding policy which favored Defendant. These are violations of Labor
13 Code §226.

14 60. Defendant knowingly and intentionally failed to provide Plaintiff and Class
15 members with timely, accurate, and itemized wage statements in accordance with California
16 Labor Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine
17 whether they were being paid for, among other things, all of the hours they worked and at the
18 proper rates of pay.

19 61. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
20 and Class members have been damaged in an amount according to proof at trial, and seek all
21 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
22 entitled to all available penalties, including but not limited to penalties pursuant to California
23 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
24 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
25 well as other available remedies.

26 ///

27 ///

NINTH CAUSE OF ACTION
Failure to Maintain Required Records
[Cal. Lab. Code §§ 226, 1174; and All Applicable IWC Wage Orders
and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

62. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 61.

63. During the statute of limitations period, as part of Defendant's illegal payroll policies and practices to deprive Plaintiff and Class members of all wages earned and due, Defendant knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and all applicable IWC Wage Orders and applicable sections, including but not limited to, the following records: total daily hours worked by each non-exempt employee; applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt employee begins and ends each workday; and accurate itemized wage statements.

64. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

TENTH CAUSE OF ACTION
Failure to Provide Sick Leave and Supplemental COVID-19 Sick Leave
[Cal. Lab. Code §§245.5, 246, 247.5, 248.1, 248.2 and 248.6]
(On Behalf of Plaintiff and the Class against Defendants)

65. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 64.

66. Plaintiff is informed and believes Defendant knowingly and intentionally failed in its affirmative obligation to maintain records, provide and pay paid sick leave and COVID-19 Supplemental Sick Leave to Plaintiff and Class Members in violation of Labor Code section 246.

1 81. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
2 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
3 entitles employees to use any accrued sick leave beginning on their 90th day of employment.

4 67. Defendant failed to maintain records and provide and pay Plaintiff and Class
5 Members paid sick leave at one of the lawful rates since Defendant failed to include in its
6 calculation the commissions and additional remuneration received by Plaintiff and the Class
7 Members.

8 68. Furthermore, Defendant knowingly and intentionally failed in its affirmative
9 obligation to provide and pay COVID-19 sick leave, supplemental sick leave and maintain
10 records relating to COVID-19 supplemental sick pay to Class members in violation of Labor
11 Code sections 245.5, 246, 247.5, 248.1, 248.2, and 248.6. 84. Labor Code section 248.1 requires
12 employers to provide up to 80 hours of COVID-19 supplemental paid sick leave to employees
13 for the period of April 16, 2020 to December 31, 2020. Labor Code 248.2 requires employers to
14 provide up to 80 hours of COVID-19 supplemental sick pay for the period of January 1, 2021
15 through September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections
16 and requires employers to provide up to 80 hours of COVID-19 supplemental sick pay for the
17 period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

18 69. Under Labor Code section 248.1, employees must be paid for COVID-19
19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
20 last pay period, (2) state minimum wage, (3) local minimum wage.

21 70. Under Labor Code section 248.2, non-exempt employees must be paid COVID-19
22 supplemental paid sick leave according to the highest of the following four methods: (1) the
23 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
24 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3)
25 the state minimum wage, or (4) the local minimum wage.

26 71. Labor Code section 248.6 requires employers to pay COVID-19 supplemental
27 sick leave under either one of the following methods: (1) regular rate of pay or (2) the
28 employee's total wages in a 90-day period divided by total hours worked.

1 72. Defendant failed to provide and pay COVID-19 supplemental paid sick leave in
2 the manner described above because Defendant failed to pay Plaintiff and the Class members
3 such sick leave at one of the rates authorized by statute.

4 73. Defendant failed to maintain records of supplemental COVID-19 sick pay in
5 violation of Labor Code section 247.5.

6 74. As a result, Defendant violated the Labor Code and are liable to Plaintiff and the
7 Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

8 **ELEVENTH CAUSE OF ACTION**
9 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**
 [Cal. Lab. Code § 2802]
10 **(On Behalf of Plaintiff and the Class against Defendant)**

11 75. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 74.

13 76. California Labor Code § 2802(a) requires an employer to indemnify an employee
14 for all necessary expenditures or losses incurred by the employee in direct consequence of the
15 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

16 77. During the Class period, Defendant knowingly and willfully failed to indemnify
17 Plaintiff and Class members for all business expenses and/or losses incurred in direct
18 consequence of the discharge of their duties while working under the direction of Defendants,
19 including but not limited to, reimbursements for cellular phone usage, mileage, the costs and
20 expenses related to uniforms and uniform maintenance, in violation of California Labor Code §
21 2802.

22 78. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
23 and Class members have been damaged in an amount according to proof at trial, and seek
24 reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor
25 Code § 2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory
26 penalties and an award of costs, expenses, and reasonable attorneys' fees, including those
27 provided in California Labor Code § 2802(c), as well as other available remedies.

28

TWELFTH CAUSE OF ACTION
Unfair and Unlawful Business Practices
[Cal. Bus. & Prof. Code § 17200 *et. seq.*]
(On Behalf of Plaintiff and the Class against all Defendant)

79. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 78.

80. Each and every one of Defendant acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to, Defendant failure to provide required meal and rest breaks, failure to pay proper overtime compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, failure to furnish accurate itemized wage statements or to maintain required records all constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

81. Defendant's violations of California wage and hour laws constitute a business practice because the aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

82. Among other practices, Defendant has avoided payment of wages, overtime wages, the provision of meal and rest breaks, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

83. As a result of these unfair and unlawful business practices, Defendant has reaped unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and members of the public. Defendant should be made to disgorge its ill-gotten gains and to restore them to Plaintiff and Class members.

84. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to

1 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
2 time of trial.

3 **THIRTEENTH CAUSE OF ACTION**
4 **Representative Action for Civil Penalties**
5 **[Cal. Lab. Code §§ 2698- 2699.5]**
6 **(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)**

7 85. Plaintiff incorporates herein by specific reference as though fully set forth the
8 allegations in paragraphs 1 through 84, with exception of the allegations in Paragraphs 14
9 through 16 (A)-(D).

10 86. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings
11 this action on behalf of the State of California, and all other aggrieved employees (e.g., current
12 and former direct and temporary, hourly-paid employees working or placed on assignment at a
13 facility of Defendant DCG in the State of California at any time within the period beginning one
14 (1) year prior and sixty-five (65) days prior to the September 13, 2024 notice Plaintiff provided
15 to the LWDA and Defendant, and ending at the time this action proceeds to final judgment
16 ("statute of limitations period").

17 87. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
18 § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other
19 current and former employees working Defendant’s facilities and warehouse in California
20 pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was
21 employed by Defendant and the alleged violations of the California Labor Code were committed
22 against Plaintiff.

23 88. As set forth fully in the above paragraphs incorporated herein, Defendant failed to
24 pay overtime wages, failed to provide the requisite meal periods and rest breaks (an any
25 associated premium pay at the regular rate), failed to pay minimum wages, failed to provide
26 accurate wage statements, failure to pay all wages owed at the time of termination, failed to
27 maintain accurate employment records, and failed to indemnify the aggrieved employees for
28 reasonable business expenses in violation of California Labor Code sections 201, 202, 203, 204,
226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198 and 2802.

1 89. In addition to the foregoing violations of the California Labor Code and IWC
2 Wage Order, Defendant failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave
3 and compensate aggrieved employees at their regular rate of pay for supplemental sick leave, i.e.,
4 their highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in
5 violation of California Labor Code § 248.1(b)(3)(A) and §248.6. Defendant failed to provide
6 COVID-19 Supplemental Sick Leave to aggrieved employees in addition to regular sick leave, in
7 violation of California Labor Code § 248.1(b)(2)(D). Defendant also failed to accurately reflect
8 any offset and/or the current amount of COVID-19 supplemental Sick Leave available to
9 aggrieved employees on their wage statements, in violation of California Labor Code §§ 246,
10 248.1(b)(2)(D), 248.2, 248.6 and for the reasons provided herein.

11 90. Defendant failed to provide suitable resting facilities. In that regard, IWC Wage
12 Order No. 1-2001, § 13(B), provides:

13 “(B) When employees are not engaged in the active duties of their employment
14 and the nature of the work requires standing, an adequate number of suitable seats
15 shall be placed in reasonable proximity to the work area and employees shall be
16 permitted to use such seats when it does not interfere with the performance of
17 their duties.”

18 Defendant failed to provide suitable resting facilities to Plaintiff and other aggrieved employees.

19 91. Defendant also failed to comply with IWC Wage Order No. 1-2001, § 15(A) and
20 (B) provide:

21 “The temperature maintained in each work area shall provide reasonable
22 comfort consistent with industry-wide standards for the nature of the
23 process and the work performed.”

24 “If excessive heat or humidity is created by the work process, the employer
25 shall take all feasible means to reduce such excessive heat or humidity to a
26 degree providing reasonable comfort. ...”

27 92. Defendant failed to maintain reasonable temperatures in the works areas of
28 Plaintiff and the other aggrieved employees during working days which were excessively hot in
the workplace. Defendant should have taken all feasible measures to reduce the excessive heat
but failed to do so. In fact, Defendant failed to implement a Heat Prevention Policy consistent
with California Labor Code §6721. Defendant was mandated to implement an indoor heat

1 prevention standards as set forth in the recently amended Sections 3395 and 3396 of Title 8 of
2 the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat
3 illness standard.

4 93. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
5 Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited
6 to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199,
7 1400 and IWC Wage Order No. 1-2001, § 20, from Defendants in a representative action for the
8 violations set forth above, including but not limited to violations of California Labor Code §§
9 200, 201, 202, 203, 204, 226, 226.7, 210, 226, 226.7, 246, 248.1, 248.6, 510, 512, 558, 1174,
10 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2802 and 2699. Plaintiff is also entitled to an award of
11 reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

12 94. Pursuant to California Labor Code §§ 2699.3, on September 13, 2024, Plaintiff
13 gave written notice by certified mail to the California Labor and Workforce Development
14 Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code and
15 applicable IWC Wage Orders alleged to have been violated, including the facts and theories to
16 support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s
17 notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the
18 alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in
19 California Labor Code § 2699.3 to commence a representative action under PAGA.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
22 situated, respectfully prays for relief against Defendants and DOES 1 through 50, inclusive, and
23 each of them, as follows:

- 24 1. For compensatory damages in an amount to be ascertained at trial;
25 2. For restitution of all monies due to Plaintiff and Class members, as well as
26 disgorged profits from the unfair and unlawful business practices of Defendants;
27 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
28 and IWC Wage Order No. 1-2001 and all applicable IWC Wage Orders and pertinent sections;

- 1 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 2 5. For preliminary and permanent injunctive relief enjoining Defendant from
- 3 violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and
- 4 from engaging in the unlawful business practices complained of herein;
- 5 6. For waiting time penalties pursuant to California Labor Code § 203;
- 6 7. For statutory penalties according to proof, including but not limited to all
- 7 penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 1174.5,
- 8 1775, 1197.1, 2699.3;
- 9 8. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
- 10 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
- 11 9. For interest on the unpaid wages at 10 percent per annum pursuant to California
- 12 Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other
- 13 applicable provision providing for pre-judgment interest;
- 14 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
- 15 218.5, 226, 1194, 2802, 2699.3, et seq. and California Code of Civil Procedure § 1021.5,
- 16 California Civil Code § 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other
- 17 applicable provisions providing for attorneys' fees and costs;
- 18 11. For declaratory relief;
- 19 12. For an order requiring and certifying the First through Twelve Causes of Action
- 20 as a class action;
- 21 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
- 22 Class counsel; and
- 23 14. For such further relief that the Court may deem just and proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff on behalf of himself and all others similarly situated, hereby demands a jury trial

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28 ///

1 with respect to all issues triable of right by jury.

2 DATED: November 19, 2024

THE WHEELER LAW FIRM, APC

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By: 

5

SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

6

*Attorney for Plaintiff and all others similarly
situated*

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