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WILLY HERNANDEZ, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

**(UNLIMITED JURISDICTION)**

WILLY HERNANDEZ, on behalf of  
himself, all others similarly situated, and the  
general public, and as an “aggrieved  
employee” on behalf of other “aggrieved  
employees” under the Labor Code Private  
Attorneys General Act of 2004,

*Plaintiff,*

vs.

FREMAK ARCHES, INC., a California  
corporation; and DOES 1-25, inclusive,

*Defendants.*

Case No.: **25CV106825**

**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, WILLY HERNANDEZ (hereafter “Plaintiff”), on behalf of himself and all  
2 others 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 No.5-2001 (hereafter “the Wage Order”) and the  
6 Business and Professions Code, against Defendant FREMAK ARCHES, INC. and DOES 1-25,  
7 inclusive (collectively “Defendants” or “FREMAK”).

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

17 **PARTIES**

18 3. Plaintiff WILLY HERNANDEZ is a resident of California. At all relevant times,  
19 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section  
20 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

21 4. Defendant FREMAK ARCHES, INC. is a corporation organized and existing  
22 under the laws of California and which employed Plaintiff and the Class Members. As such, it is  
23 a citizen of California based on Plaintiff’s information and belief.

24 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
25 participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but  
26 is informed and believes and thereon alleges that said Defendants are legally responsible for the  
27 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.  
28 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants

1 when ascertained.

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

7 7. At all relevant times, in perpetrating the acts and omissions alleged herein,  
8 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or  
9 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-  
10 described class in accordance with applicable laws as alleged herein.

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

16 **CLASS ALLEGATIONS**

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

22 10. **Class Definition:** The Class is defined as follows: All current and former hourly,  
23 non-exempt employees who worked for Defendant FREMAK ARCHES, INC. at any of its  
24 California locations at any time during the period beginning four years prior to the filing of this  
25 action and ending on the date that final judgment is rendered in this action.

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

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

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

8                   A.     Whether Defendants failed to pay all wages earned to Class Members for  
9 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,  
10 meal period premium, and rest period premium;

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

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

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

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

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

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

23                  H.     Whether Defendants failed to provide the Class Members with paid sick  
24 leave;

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

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

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

3 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.  
4 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or  
5 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor  
6 Code, the Wage Order, and the Business and Professions Code.

7 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative  
8 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent  
9 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class  
10 Members. Plaintiff will fairly and adequately represent and protect the interests of Class  
11 Members.

12 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that  
13 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced  
14 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of  
15 Plaintiff and absent Class Members.

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

## 26 **STATEMENT OF FACTS**

27 18. Plaintiff started working for FREMAK on or around April 2022 as a cook at  
28 a McDonald's located at 38860 Fremont Blvd, Fremont, CA 94536. Plaintiff was classified as an

1 hourly, non-exempt employee. Plaintiff's last rate of pay was around \$20.00 per hour. Plaintiff's  
2 employment ended on or around August 20, 2024.

3 19. FREMAK violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed  
4 to pay Plaintiff and other similarly situated Class Members for all hours worked, including the  
5 statutory minimum wage for all hours worked and for "off the clock" work. This is so because  
6 FREMAK had a company policy wherein they would disproportionately round down the number  
7 of hours worked, resulting in "time shaving" and further resulting in Class Members not being  
8 paid for all hours worked. In addition, Plaintiff and other Class Members worked "off the clock"  
9 in that they would perform work activities before and after clocking out. There were times  
10 wherein Plaintiff would arrive early for his shift and help out co-workers by cooking, especially  
11 if it was a busy time. The latter lasted approximately 10 to 15 minutes. Moreover, Plaintiff would  
12 take out the trash AFTER clocking out and would also handle deliveries that would come in after  
13 Plaintiff had already clocked out. It was the normal practice for employees to work "off the clock"  
14 and management/ownership was unequivocally aware of this practice. Moreover, since Plaintiff  
15 and other Class Members would work through their meal breaks at times, the latter would also  
16 amount to a minimum wage violation because they were not paid for all hours worked. Moreover,  
17 FREMAK failed to provide its employees with proper and accurate reporting time pay.

18 20. Due to the above "off the clock" violations above and time shaving/rounding,  
19 FREMAK also violated Labor Code §510 because it failed to pay Plaintiff and other Class  
20 Members overtime compensation, even though they worked more than 8 hours per day, 12 hours  
21 per day, and/or 40 hours per week throughout their employment. Plaintiff's and other Class  
22 Members' actual work hours entitled them to overtime compensation, however, FREMAK did  
23 not compensate its hourly, non-exempt employees with the correct amount of overtime due to the  
24 "off the clock" work and time shaving as described above. This is especially true because  
25 Plaintiff's typical schedule was 4:30 p.m. to 1:00 a.m., which is 8.5 hours. As such, any "off the  
26 clock" work would unequivocally mean that Plaintiff was not paid for overtime hours worked.  
27 Furthermore, FREMAK failed to include bonuses/incentive payments/shift differentials in  
28 calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay.

1 Additionally, the incentive, shift differential, and bonus payments were also not factored into  
2 employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v.  
3 Loews case.

4 21. FREMAK also violated Labor Code § 226.7 and the appropriate Industrial Welfare  
5 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated  
6 Class Members with 10-minute rest periods for every four hours of work, or majority portion  
7 thereof, throughout their employment. FREMAK did not completely relieve Plaintiff and other  
8 Class Members of all duty during said rest periods. FREMAK did not pay to Plaintiff and other  
9 Class Members one additional hour of pay at Plaintiff's regular rate of compensation for each  
10 workday that one or more statutory rest periods was not provided. Plaintiff and other Class  
11 Members did not always receive rest breaks. The rest breaks had to be authorized by the manager  
12 and if the manager did not give permission, they could not go. When they were able to receive  
13 rest breaks, the rest breaks would be interrupted by the manager asking work-related questions  
14 despite Plaintiff informing the manager that he was supposed to be on a rest break. As such, the  
15 culture as well as the policies and procedures of FREMAK did not lend itself to the employees  
16 receiving consistent statutory and uninterrupted rest breaks wherein they were relieved of all work  
17 duties. The environment at FREMAK was not conducive to receiving statutory rest breaks under  
18 California law and timely, statutory rest breaks were not consistently authorized or enforced.

19 22. FREMAK violated Labor Code §§ 512 and 226.7 and the appropriate Industrial  
20 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt  
21 employees, including Plaintiff and other Class Members, the requisite 30-minute, uninterrupted  
22 meal periods for every five (5) hours of work throughout their employment. FREMAK did not  
23 completely relieve Plaintiff and other employees of all duty during said meal periods. FREMAK  
24 did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their  
25 regular rate of compensation for each workday that one or more statutory meal periods was not  
26 provided. Like the rest breaks, receiving a consistent thirty-minute and timely meal break before  
27 the 5th hour was not part of the company culture and was not consistently enforced by FREMAK.  
28 There were certainly occasions wherein Plaintiff did not receive a timely meal period under

1 California law as he would at times receive a meal break at 10:00 p.m. when he started his shift  
2 at 4:30 p.m. Furthermore, if they were understaffed, there were occasions wherein Plaintiff would  
3 be told to and would clock out for his meal break then continue working and try to take it later on  
4 in the day. This would not only qualify as “off the clock” work, but it’s an obvious meal period  
5 violation. Additionally, a manager had to actually authorize the meal break to be taken.  
6 Consequently, it was the normal practice and custom of FREMAK not to authorize, permit, and  
7 enforce timely statutory meal periods. If FREMAK had Plaintiff sign a meal period waiver, it  
8 would not be valid and enforceable since Plaintiff and other Class Members generally worked  
9 more than a 5-hour shift. Furthermore, under California law, however, employees must make an  
10 affirmative decision every day regarding whether to waive their meal periods. August 13, 2003  
11 DLSE Opinion Letter (“**The decision to forego a meal period may not, therefore, be based on**  
12 **a specific requirement of the employer or on a policy or practice which could reasonably be**  
13 **perceived to be a condition of employment. Therefore, blanket “waivers” of meal periods**  
14 **...whether written or oral, will not be considered valid.**”). As such, any meal breaks waivers  
15 for first or second meal breaks would not be valid. Moreover, a first meal waiver would not apply  
16 to Plaintiff since he generally worked over a 6 hour shift. If FREMAK had Plaintiff sign an on-  
17 duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would  
18 be invalid and unenforceable because the nature of Plaintiff’s job does not and did not prevent  
19 him from taking a meal period and the company could have hired “breakers” to relieve Plaintiff  
20 of his cooking job duties so that he can actually take a timely, uninterrupted meal period.  
21 Moreover, any such “on duty” meal period agreement did not allow for Plaintiff to revoke such  
22 an agreement even if it was signed. As such, Plaintiff and other Class Members did not always  
23 receive statutory, timely meal periods during their employment. To the extent that FREMAK  
24 argues that employees receive meal break premium pay for missed meal periods, that argument  
25 is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations  
26 themselves, irrespective of whether an employee received the premium payment for a missed,  
27 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,  
28 “section 226.7 does not give employers a lawful choice between providing either meal and rest

1 breaks or an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th  
2 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the  
3 employer has still committed a violation even if the remedy for the violation has been paid. See  
4 *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at \*4). As such, the work  
5 environment and culture at FREMAK was not conducive to receiving consistent, timely, statutory  
6 meal breaks under California law. Moreover, any meal or rest break premiums paid were not  
7 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments  
8 as well as overtime compensation. Also note that any meal period premiums that were paid are  
9 PER SE and unequivocal admissions to PAGA penalties being owed.

10 23. Furthermore, during the relevant time period, and due to the above labor code  
11 violations, FREMAK failed to pay Plaintiff and other similarly situated Class Members all wages  
12 due to them within any time period specified by California Labor Code section 204. Since Plaintiff  
13 was not fully compensated for his “off the clock” work and overtime, and since Plaintiff did not  
14 receive proper meal and rest break premiums, Plaintiff would still be owed wages pursuant to  
15 Labor Code Section 204. FREMAK was also in violation of California Labor Code section 226(a)  
16 by failing to include pertinent information on the wage statements, including but not limited to,  
17 the correct hourly rate, all hours worked, overtime hours worked, tips, correct overtime pay, gross  
18 wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions,  
19 the correct start and end of the pay period, all employee identifying information, the correct and  
20 complete name and address of the legal employer, and reimbursement for business expenses,  
21 among other Class Members. As such, FREMAK did not provide Plaintiff and other similarly  
22 situated Class Members with complete, accurate itemized wage statements.

23 24. During the relevant time period, FREMAK also failed to keep accurate and  
24 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff  
25 and other Class Members pursuant to California Labor Code sections 1174(d).

26 25. FREMAK also violated Labor Code § 203 because it willfully failed to pay  
27 Plaintiff and other similarly situated Class Members earned and due wages upon separation of  
28 employment, either immediately upon involuntary termination, or within 72 hours of resignation.

1 These earned but unpaid wages include compensation for all hours worked, including minimum  
2 wages, overtime compensation, and premium pay for missed meal and rest breaks.

3 26. During the relevant time period, Plaintiff and other Class Members incurred  
4 necessary, business-related expenses and costs that were not reimbursed by FREMAK. These  
5 costs include, but are not limited to uniforms, including non-slip shoes. Accordingly, FREMAK  
6 was in violation of California Labor Code sections 2800 and 2802.

7 27. Furthermore, FREMAK did not provide proper and correct/accurate sick pay  
8 (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on  
9 employee pay stubs and also failed to provide proper sick leave in violation of Labor Code  
10 sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the  
11 employees pursuant to Wage Order no. 5-2001 as employees did not have a designated break  
12 area.

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

- 15 A. Not provided with all off duty meal periods;
- 16 B. Not authorized and permitted to take all rest break periods;
- 17 C. Not paid one hour's pay for each workday in which Defendants failed to  
18 authorize and permit them to take one or more timely rest periods;
- 19 D. Not paid one hour's pay for each workday in which Defendants failed to  
20 provide them with one or more timely meal periods;
- 21 E. Not paid all wages earned, including, but not limited to, minimum, regular,  
22 overtime, and doubletime wages;
- 23 F. Not indemnified for all necessary business expenditures incurred during  
24 the discharge of their duties;
- 25 G. Not provided with accurate and complete wage statements;
- 26 H. Not timely paid all earned and unpaid wages at the time their employment  
27 ended.
- 28 I. Not provided with accurate sick pay; and

1 J. Not provided with suitable seating.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST BREAKS**

4 **(Lab. Code §§ 226.7 and 1198)**

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

6 29. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 30. At all relevant times during the applicable limitations period, Plaintiff and the  
8 class have been employees of Defendants and entitled to the benefits and protections of  
9 California Labor Code §§ 226.7, 1198, and the Wage Order.

10 31. Labor Code § 1198 states,

11 “The maximum hours of work and the standard conditions of labor fixed  
12 by the commission shall be the maximum hours of work and the standard  
13 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.”

14 32. In relevant part, Section 12 of the Wage Order states:  
15 Rest Periods:

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

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

25 33. In addition, Labor Code Section 226.7 states

26 (b) An employer shall not require an employee to work during a meal  
27 or rest or recovery period mandated pursuant to an applicable statute, or  
28 applicable regulation, standard, or order of the Industrial Welfare  
Commission, the Occupational Safety and Health Standards Board, or the

1 Division of Occupational Safety and Health.

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

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

10 35. Defendants failed to provide Plaintiff with all required rest breaks in accordance  
11 with the Wage Order. Plaintiff and the Class Members did not take timely, uninterrupted rest  
12 breaks of at least two per day wherein they were relieved of all duty. The rest breaks had to be  
13 authorized by the manager and if the manager did not give permission, they could not go. When  
14 they were able to receive rest breaks, the rest breaks would be interrupted by the manager asking  
15 work-related questions despite for example, Plaintiff informing the manager that he was  
16 supposed to be on a rest break. Plaintiff is informed and believes and thereon alleges that, at  
17 relevant times within the applicable limitations period, Defendants had a policy, practice, or a  
18 lack of a policy which resulted in Defendants not providing the class with all rest breaks required  
19 by California law.

20 36. Defendants failed to pay Plaintiff the additional wages required by California  
21 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes  
22 and thereon alleges that, at relevant times within the applicable limitations period, Defendants  
23 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not  
24 providing the class with additional wages for all rest breaks not provided to them as required by  
25 California Labor Code § 226.7.

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

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

4                                   **SECOND CAUSE OF ACTION**

5                                   **FAILURE TO PROVIDE MEAL PERIODS**

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

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

8           39. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9           40. At all relevant times during the applicable limitations period, Plaintiff and the  
10 class have been employees of Defendants and entitled to the benefits and protections of  
11 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

12          41. Labor Code § 1198 states,

13                                   “The maximum hours of work and the standard conditions of labor fixed  
14 by the commission shall be the maximum hours of work and the standard  
15 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.”

16          42. In relevant part, Labor Code Section 512 states

17                                   “An employer may not employ an employee for a work period of more  
18 than five hours per day without providing the employee with a meal  
19 period of not less than 30 minutes, except that if the total work period per  
day of the employee is no more than six hours, the meal period may be  
20 waived by mutual consent of both the employer and employee. An  
employer may not employ an employee for a work period of more than  
21 10 hours per day without providing the employee with a second meal  
period of not less than 30 minutes, except that if the total hours worked  
22 is no more than 12 hours, the second meal period may be waived by  
mutual consent of the employer and the employee only if the first meal  
23 period was not waived.”

24          43. In relevant part, Section 11 of the Wage Order states:

25                                   Meal Periods:

26                                   (A) No employer shall employ any person for a work period of more  
27 than five (5) hours without a meal period of not less than 30  
28 minutes, except that when a work period of not more than six (6)

hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...

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

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

45. 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 Order. 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.

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

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

48. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for

1 all meal periods not provided to them.

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

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

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

9 50. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

10 51. At all relevant times, Plaintiff and the other Class Members have been non-exempt  
11 employees of Defendants and entitled to the benefits and protections of California Labor Code  
12 sections 1194, 1197, and 1198 and the Wage Order.

13 52. Section 2 of the Wage Order defines “hours worked” as “the time during which an  
14 employee is subject to the control of an employer, and includes all the time the employee is  
15 suffered or permitted to work, whether or not required to do so.”

16 53. Section 4 of the Wage Order requires an employer to pay non-exempt employees  
17 at least the minimum wage set forth therein for all hours worked, which consists of all hours that  
18 an employer has actual or constructive knowledge that employees are working.

19 54. Labor Code section 1194 invalidates any agreement between an employer and an  
20 employee to work for less than the minimum wage required under the applicable Wage Order.

21 55. Labor Code section 1197 makes it unlawful for an employer to pay an employee  
22 less than the minimum wage required under the applicable Wage Order for all hours worked  
23 during a payroll period.

24 56. Labor Code section 1198 makes it unlawful for an employer to employ an  
25 employee under conditions that violate the Wage Order.

26 57. In conjunction, these provisions of the Labor Code require employers to pay non-  
27 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours  
28 worked, including unrecorded hours when the employer knew or reasonably should have known

1 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22  
2 Cal.4th 575, 585.)

3 58. At all relevant times, Defendants did not provide Plaintiff and the Class Members  
4 with the minimum wages to which they were entitled for all work performed. Plaintiff and the  
5 Class Members were not paid for all hours worked, because the company would routinely time  
6 shave and round down hours to the detriment of the employees, which would translate into  
7 employees not getting paid for all hours worked in contravention of California's minimum wage  
8 laws. In addition, Plaintiff and other Class Members worked "off the clock" in that they would  
9 perform work activities before and after clocking out. Moreover, to the extent Plaintiff and the  
10 Class Members worked through their meal periods or their meal periods were interrupted by  
11 work obligations, Plaintiff and the Class Members did not receive compensation for all hours  
12 worked in violation of California's minimum wage laws.

13 59. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'  
15 failure to compensate Plaintiff and the other Class Members minimum wages for all hours  
16 worked as required by California law.

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

20 61. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class  
21 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of  
22 unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts  
23 subject to proof.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME WAGES**

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

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

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

1           63.     At all relevant times, Plaintiff and the other Class Members have been non-exempt  
2 employees of Defendants and entitled to the benefits and protections of California Labor Code  
3 sections 510, 1194, and 1198 and the Wage Order.

4           64.     Section 3 of the Wage Order states:  
5           (A) Daily Overtime - General Provisions

6           (1) The following overtime provisions are applicable to employees 18 years of  
7 age or over and to employees 16 or 17 years of age who are not required by law  
8 to attend school and are not otherwise prohibited by law from engaging in the  
9 subject work. Such employees shall not be employed more than eight (8) hours in  
10 any workday or more than 40 hours in any workweek unless the employee  
11 receives one and one-half (1 ½) times such employee's regular rate of pay for all  
12 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  
six (6) days in any workweek is permissible provided the employee is  
compensated for such overtime at not less than:

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

16           (b) Double the employee's regular rate of pay for all hours worked in excess of  
17 12 hours in any workday and for all hours worked in excess of eight (8) hours on  
the seventh (7<sup>th</sup>) consecutive day of work in a workweek.

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

21           65.     Labor Code section 510 states:

22           Eight hours of labor constitutes a day's work. Any work in excess of eight hours  
23 in one workday and any work in excess of 40 hours in any one workweek and the  
24 first eight hours worked on the seventh day of work in any one workweek shall  
25 be compensated at the rate of no less than one and one-half times the regular rate  
26 of pay for an employee. Any work in excess of 12 hours in one day shall be  
27 compensated at the rate of no less than twice the regular rate of pay for an  
28 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.

1           66. Labor Code section 1194 invalidates any agreement between an employer and an  
2 employee to work for less than the minimum wage required under the applicable Wage Order.

3           67. Labor Code section 1198 makes it unlawful for an employer to employ an  
4 employee under conditions that violate the Wage Order.

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

10          69. At all relevant times, Defendants required Plaintiff and the Class Members to  
11 perform “off the clock”. As such, Plaintiff and the Class Members often worked more than eight  
12 (8) hours per day and more than forty (40) hours per week. Defendants, however, failed to pay  
13 Plaintiff and the other Class Members for this off-the-clock work, and failed to compensate them  
14 at one and one-half times their respective regular rates of pay for all overtime hours worked.  
15 Moreover, despite providing bonuses and other incentive payments, Defendants did not factor in  
16 those payments in calculating employees’ correct regular rate of pay in order to then calculate  
17 the correct overtime rate of pay.

18          70. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
19 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’  
20 failure to compensate Plaintiff and the other Class Members for all overtime hours worked as  
21 required by California law.

22          71. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class  
23 Members have suffered damages, in an amount subject to proof, to the extent they were not paid  
24 the full amount of overtime wages earned during each pay period during the applicable limitations  
25 period.

26          72. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class  
27 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of  
28 unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts

1 subject to proof.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO INDEMNIFY**

4 **(Lab. Code §§ 1198 & 2802)**

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

6 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 74. At all relevant times, Plaintiff and the Class Members have been non-exempt  
8 employees of Defendants and entitled to the benefits and protections of the California Labor Code  
9 §§ 1198 and 2802 and the Wage Order.

10 75. In pertinent part, California Labor Code § 2802(a) states:

11 “An employer shall indemnify his or her employee[s] for all  
12 necessary expenditures incurred by the employee in direct  
13 consequence of the discharge of his or her duties.”

14 76. Section 9(B) of the Wage Order states:

15 When tools or equipment are required by the employer or are  
16 necessary to the performance of a job, such tools and equipment  
17 shall be provided and maintained by the employer, except that an  
18 employee whose wages are at least two (2) times the minimum  
19 wage provided herein may be required to provide and maintain  
20 hand tools and equipment customarily required by the trade or  
21 craft.

22 77. California Labor Code § 1198 prohibits employers from employing their  
23 employees under conditions prohibited by the Wage Order.

24 78. At all relevant times, as a condition for employment, Defendants required Plaintiff  
25 and the Class Members to incur business expenses. These costs include, but are not limited to,  
26 uniforms, including non-slip shoes. Defendants, however, failed to reimburse Plaintiff and the  
27 Class Members for these required business expenses.

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

80. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class

1 Members are entitled to reimbursement for all necessary expenditures and losses and interest  
2 thereon, due and owing to them within four years of the date of the filing of the Complaint until  
3 the entry of judgment.

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

7 **SIXTH CAUSE OF ACTION**

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

9 **(Lab. Code § 226)**

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

11 82. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

12 83. At all relevant times during the applicable limitations period, Plaintiff and the  
13 other Class Members have been employees of Defendants and entitled to the benefits and  
14 protections of California Labor Code section 226.

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

- 18 (1) Gross wages earned,
- 19 (2) Total hours worked by the employee, except for any employee whose  
20 compensation is solely based on a salary and who is exempt from payment of overtime under  
21 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 22 (3) The number of piece rate units earned and any applicable piece rate if the  
23 employee is paid on a piece-rate basis,
- 24 (4) All deductions, provided that all deductions made on written orders of the  
25 employee may be aggregated and shown as one item,
- 26 (5) Net wages earned,
- 27 (6) The inclusive dates of the period for which the employee is paid,
- 28 (7) The name of the employee and his or her social security number, except

1 that by January 1, 2008, only the last four digits of his or her social security number or an  
2 employee identification number other than a social security number may be shown on the itemized  
3 statement,

4 (8) The name and address of the legal entity that is the employer, and

5 (9) All applicable hourly rates in effect during the pay period and the  
6 corresponding number of hours worked at each hourly rate by the employee.

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

13 86. Pursuant to California Labor Code section 226(e), an employee is deemed to suffer  
14 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer  
15 injury if the employer fails to provide accurate and complete information as required by California  
16 Labor Code section 226(a) and the employee cannot "promptly and easily determine" from the  
17 wage statement alone one or more of the following:

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

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

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

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

1           87.     “Promptly and easily determine,” as stated in California Labor Code section  
2 226(e), means a reasonable person would be able to readily ascertain the information without  
3 reference to other documents or information.

4           88.     As alleged herein, Defendants failed to provide Plaintiff and the other class  
5 members with all meal and rest periods in compliance with California law. They also failed to  
6 provide them with premium wages on workdays they failed to provide them with one or more  
7 meal and/or rest periods in compliance with California law. Further, Defendants failed to  
8 compensate Plaintiff and the other Class Members for all hours worked. As a result, Defendants  
9 have failed to properly itemize Plaintiff and the other Class Members’ gross and net wages earned,  
10 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly  
11 rate, and other requirements of California Labor Code § 226. As a result, Defendants have violated  
12 California Labor Code § 226.

13           89.     Defendants’ failure to provide Plaintiff and the other Class Members with accurate  
14 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and  
15 the other Class Members with accurate wage statements but intentionally provided wage  
16 statements that Defendants knew were not accurate.

17           90.     As a result of being provided with inaccurate wage statements by Defendants,  
18 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate  
19 wage statements were violated and they were misled about the amount of wages they had actually  
20 earned and were owed. In addition, the absence of accurate information on their wage statements  
21 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery  
22 and mathematical computations to determine the amounts of wages owed, has caused difficulty  
23 and expense in attempting to reconstruct time and pay records and/or has led to the submission of  
24 inaccurate information about wages to state and federal government agencies. Further, Plaintiff  
25 and the other Class Members were not able to ascertain from the wage statements whether  
26 Defendants complied with their obligations under California Labor Code section 226(a).

27           91.     Pursuant to California Labor Code section 226(e), Plaintiff and the other class  
28 members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)

1 for the initial pay period in which a violation of California Labor Code section 226(a) occurred  
2 and one hundred dollars for each violation of California Labor Code section 226(a) in a  
3 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per  
4 Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

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

9 **SEVENTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(Lab. Code §§ 201-203)**

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

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

14 94. At all relevant times during the applicable limitations period, Plaintiff and the  
15 Class have been non-exempt employees of Defendants and entitled to the benefits and protections  
16 of California Labor Code sections 201 to 203 and the Wage Order.

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

19 96. Labor Code section 202 provides that all earned and unpaid wages of an employee  
20 who quits after providing at least 72-hours notice before quitting are due and payable at the time  
21 of quitting and that all earned and unpaid wages of an employee who quits without providing at  
22 least 72-hours notice before quitting are due and payable within 72 hours.

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

26 98. Plaintiff is informed and believes that Defendants' failures to timely pay all final  
27 wages to them and the class members have been willful in that Defendants have the ability to pay  
28 final wages in accordance with Labor Code sections 201 and 202 but have intentionally adopted

1 policies or practice that are incompatible with those requirements.

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

5 100. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff  
6 and the class all of their earned and unpaid wages have been willful in that, at all relevant times,  
7 Defendants have deliberately maintained policies and practices that violate the requirements of  
8 the Labor Code and the Wage Order even though, at all relevant times, they have had the ability  
9 to comply with those legal requirements.

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

### 13 **EIGHTH CAUSE OF ACTION**

#### 14 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

15 **(Lab. Code §§ 204)**

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

17 102. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

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

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

23 105. Defendants failed to pay Plaintiff and the Class Members all wages earned each  
24 pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the  
25 liability period, Defendants maintained a policy or practice of not paying Plaintiff and the Class  
26 Members wages for all hours worked, including overtime hours and premium pay for missed rest  
27 breaks and meal breaks.

28 106. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members

1 have suffered damages in an amount, subject to proof, to the extent he was not paid all wages  
2 each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can  
3 be determined directly from Defendants' records or indirectly based on information from  
4 Defendants' records.

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

8 **NINTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

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

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

12 108. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

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

16 110. The unlawful conduct of Defendants alleged herein amounts to and constitutes  
17 unfair competition within the meaning of California Business & Professions Code sections 17200,  
18 et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have  
19 unfairly gained a competitive advantage over other comparable companies doing business in  
20 California that comply with their legal obligations to, among other things, pay their employees  
21 premium wages for workdays in which they did not provide employees with one or more meal  
22 and rest periods, reimburse their employees for reasonable expenses incurred during the course  
23 of performing their duties, provide suitable seating for their employees, provide paid sick leave  
24 to their employees, and pay their employees all earned wages for all minimum, regular, and  
25 overtime hours worked at the correct rates of pay. Defendants have violated California Labor  
26 Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 1174, 1194, 1197, 1198, and  
27 2802.

28 111. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the

1 other Class Members have suffered injuries in fact and lost money or property. Defendants  
2 deprived Plaintiff and the other Class Members of minimum, overtime, and premium wages and  
3 reimbursement for expenses that Plaintiff and the other Class Members incurred during the course  
4 of performing their duties.

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

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

## 12 **TENTH CAUSE OF ACTION**

### 13 **CIVIL PENALTIES UNDER PAGA**

#### 14 **(By Plaintiff and the Class against all Defendants)**

15 114. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 115. The "Aggrieved Employees" are all members of the class defined above who  
17 Defendants employed during the period beginning September 5, 2023 and ending on the date that  
18 final judgment is entered in this action.

19 116. Labor Code § 204 states

20 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,  
21 or 204.2, earned by any person in any employment are due and payable twice  
22 during each calendar month, on days designated in advance by the employer as the  
23 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any  
24 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. ...

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

27 (2) An employer is in compliance with the requirements of subdivision (a) of  
28 Section 226 relating to total hours worked by the employee, if hours worked in

1 excess of the normal work period during the current pay period are itemized as  
2 corrections on the paystub for the next regular pay period. Any corrections set out  
3 in a subsequently issued paystub shall state the inclusive dates of the pay period  
4 for which the employer is correcting its initial report of hours worked.

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

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

11 117. Defendants paid wages to employees on regular intervals. Defendants failed to pay  
12 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,  
13 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for  
14 all wages earned and all hours worked.

15 118. During the applicable time period, Defendants violated California Labor Code §§  
16 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802  
17 and the Wage Order.

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

21 120. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are  
22 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code  
23 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and  
24 2802 during the applicable limitations period in the following amounts:

25 A. For violations of California Labor Code § 204, one hundred dollars  
26 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars  
27 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation  
28 (penalty amounts established by California Labor Code § 210).

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

1 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty  
2 dollars (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars  
3 (\$100.00) for each Aggrieved Employee for each subsequent violation per pay period (penalty  
4 amounts established by California Labor Code § 558).

5 D. For violations of California Labor Code § 1174, five hundred dollars  
6 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by  
7 California Labor Code § 1174.5).

8 E. For violations of California Labor Code § 1197, one hundred dollars  
9 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred  
10 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation per pay period  
11 (regardless of whether the initial violations were intentionally committed) (penalty amounts  
12 established by California Labor Code § 1197.1).

13 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233, 246,  
14 1194, 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period  
15 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per  
16 pay period for each subsequent violation (penalty amounts established by California Labor Code  
17 § 2699(f)(2)).

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

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

28 **PRAYER FOR RELIEF**

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

A. An order that the action be certified as a class action;

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- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid Wages;
- E. Actual Damages;
- F. Statutory Damages;
- G. Liquidated Damages;
- H. Restitution;
- I. Declaratory and injunctive relief;
- J. Equitable relief;
- K. Pre-judgment interest;
- L. Statutory penalties;
- M. Civil penalties;
- N. Costs of suit;
- 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, WILLY HERNANDEZ,  
and all others similarly situated