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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JUAN TORO, as an aggrieved employee
pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
California and other non-party Aggrieved
Employees,

Plaintiff,

vs.

ALTUM PACKAGING LP, a Delaware
limited partnership; and DOES 1 through
10, inclusive,

Defendants.

Case No.: CIVSB2504730

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Juan Toro, as an aggrieved employee and on behalf of the State of California
2 and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on November 26, 2024, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of damages, penalties, and other relief sought in this action
15 does not exceed \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over Defendants because Defendants are either
20 citizens of California, have sufficient minimum contacts in California, or otherwise
21 intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play
23 and substantial justice. There is no basis for federal diversity jurisdiction in this action given
24 that the State of California, as the real party in interest in this action, is not a “citizen” for
25 purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118,
26 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to
27 satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
28 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil

penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants employ persons within the County of San Bernardino, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least two locations within the County of San Bernardino, including Defendants’ facilities in San Bernardino (1493 E. San Bernardino Ave, San Bernardino, California 92408) and Chino (14312 Central Avenue, Chino, California 91710). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Juan Toro is a resident of Huntington Park, in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately September 2024 to October 2024. Plaintiff worked for Defendants as an Electrical Maintenance Mechanic at their manufacturing plant in City of Industry, California. During his employment, Plaintiff typically worked eight (8) hours to ten (10) hours or more per day and five (5) days per week. Plaintiff’s primary job duties included, without limitation, installing, troubleshooting, repairing, and performing maintenance on production equipment and electrical circuits.

7. ALTIUM PACKAGING LP was and is, upon information and belief, a

Delaware limited partnership, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of ALTIUM PACKAGING LP at all relevant times.

10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to ALTIUM PACKAGING LP and/or DOES 1 through 10 (collectively, “Defendants” or “ALTIUM”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

11. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

12. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

PAGA REPRESENTATIVE ALLEGATIONS

13. Defendants are one of the largest plastic container companies and suppliers of rigid plastic packaging. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Atlanta,

Georgia, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

14. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

15. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Atlanta, Georgia, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

16. Defendants continue to employ non-exempt or hourly paid employees in California.

17. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

18. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other non-party Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

1 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive certain wages for overtime compensation and that they were not receiving certain
4 wages for overtime compensation.

5 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 receive at least minimum wages for compensation and that they were not receiving at least
8 minimum wages for work that was required to be done off-the-clock. In violation of the
9 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
10 least minimum wages for work done off-the-clock.

11 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
14 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
15 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
16 other non-party Aggrieved Employees were not provided with all meal periods or payment of
17 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
18 uninterrupted, thirty (30) minute meal period.

19 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
22 payment of one (1) additional hour of pay at their regular rates of pay when they were not
23 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
24 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
25 provided with payment of one (1) additional hour of pay at their regular rates of pay when
26 they were not authorized and permitted to take a compliant rest period.

27 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 receive complete and accurate wage statements in accordance with California law. In
2 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
3 were not provided complete and accurate wage statements.

4 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that they had a duty to maintain accurate and complete payroll records in
6 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
7 knowingly, and intentionally failed to do so.

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 timely payment of wages during their employment. In violation of the California Labor Code,
11 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
12 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
13 premiums, within permissible time periods.

14 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 timely payment of all wages earned upon termination of employment. In violation of the
17 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
18 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
19 and/or meal and rest period premiums, within permissible time periods.

20 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive full reimbursement for all business-related expenses and costs they incurred during the
23 course and scope of their employment and that they did not receive full reimbursement of
24 applicable business-related expenses and costs incurred.

25 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to compensate
27 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
28 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally

1 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
2 that they were properly denied wages, all in order to increase Defendants' profits.

3 29. At all times herein set forth, PAGA provides that any provision of law under
4 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
5 assessed and collected by the LWDA for violations of the California Labor Code and
6 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
7 civil action brought on behalf of themselves and other current or former employees pursuant
8 to procedures outlined in California Labor Code section 2699.3.

9 30. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
10 "any person who was employed by the alleged violator and personally suffered each of the
11 violations alleged."

12 31. Plaintiff and other current and former employees of Defendants are "aggrieved
13 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants'
14 current or former employees and each of the alleged violations were committed against them.

15 32. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
16 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
17 following requirements have been met:

- 18 (a) The aggrieved employee shall give written notice by online filing
19 (hereinafter "Employee's Notice") to the LWDA and by certified mail
20 to the employer of the specific provisions of the California Labor Code
21 alleged to have been violated, including the facts and theories to support
22 the alleged violations.
- 23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(a) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).
- 26 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
27 employer and the aggrieved employee by certified mail that it does not
28 intend to investigate the alleged violation within sixty (60) calendar

1 days of the postmark date of the Employee's Notice. Upon receipt of
2 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
3 five (65) calendar days of the postmark date of the Employee's Notice,
4 the aggrieved employee may commence a civil action pursuant to
5 California Labor Code section 2699 to recover civil penalties in addition
6 to any other penalties to which the employee may be entitled.

7 33. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
8 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
9 provision other than those listed in Section 2699.5 after the following requirements have been
10 met:

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing to the LWDA and by certified mail to the employer of the
13 specific provisions of the California Labor Code alleged to have been
14 violated (other than those listed in Section 2699.5), including the facts
15 and theories to support the alleged violation.
- 16 (b) An aggrieved employee's notice filed with the LWDA pursuant to
17 2699.3(c) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The employer may cure the alleged violation within thirty-three (33)
20 calendar days of the postmark date of the notice. The employer shall
21 give written notice by certified mail within that period of time to the
22 aggrieved employee or representative and the agency if the alleged
23 violation is cured, including a description of actions taken, and no civil
24 action pursuant to Section 2699 may commence. If the alleged violation
25 is not cured within the 33-day period, the employee may commence a
26 civil action pursuant to Section 2699.

27 34. On November 26, 2024, Plaintiff provided written notice by online filing to the
28 LWDA and by certified mail to Defendants of the specific provisions of the California Labor

Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-1063881-24. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants are attached hereto as "Exhibit 1."

35. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the written notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

36. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

37. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the

1 applicable IWC Wage Order.

2 38. Defendants, at all times relevant to this complaint, were employers or persons
3 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
4 Employees' rights by violating various sections of the California Labor Code as set forth
5 above.

6 39. As set forth below, Defendants have violated numerous provisions of both the
7 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
8 Order.

9 40. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
10 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public
11 interest as a private attorney general, seeks assessment and collection of civil penalties and
12 injunctive relief for himself, all other non-party Aggrieved Employees, and the State of
13 California against Defendants for violations of California Labor Code sections 201, 202, 204,
14 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

15 **FIRST CAUSE OF ACTION**

16 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

17 **(Against all Defendants)**

18 41. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 42. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
22 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and
23 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
24 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
25 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, and 2802.

26 43. Defendants' conduct, as alleged herein, violates numerous sections of the
27 California Labor Code, including, but not limited to, the following:

28 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

1 Wage Order for Defendants' failure to compensate Plaintiff and other
2 non-party Aggrieved Employees with all required overtime pay, as set
3 forth below;

4 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
5 the applicable IWC Wage Order for Defendants' failure to compensate
6 Plaintiff and other non-party Aggrieved Employees with at least
7 minimum wages for all hours worked, as set forth below;

8 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
10 and other non-party Aggrieved Employees with meal periods, as set
11 forth below;

12 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to authorize and
14 permit Plaintiff and other non-party Aggrieved Employees to take rest
15 periods, as set forth below;

16 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
17 IWC Wage Order for failure to provide accurate and complete wage
18 statements to Plaintiff and other non-party Aggrieved Employees, as set
19 forth below;

20 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
21 IWC Wage Order for failure to maintain payroll records, as set forth
22 below;

23 (g) Violation of Labor Code sections 204 for failure to pay all earned wages
24 during employment, as set forth below;

25 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
26 earned wages upon termination, as set forth below; and

27 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
28 and other non-party Aggrieved Employees for all business expenses

necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

44. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

45. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

46. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

47. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

48. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

1 49. During the relevant time period, Defendants willfully failed to pay all overtime
2 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
3 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
4 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
5 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
6 not recorded.

7 50. First, Defendants had, and continue to have, a company-wide policy and/or
8 practice requiring Plaintiff and other non-party Aggrieved Employees to perform various
9 work-related tasks while off-the-clock. For example, Plaintiff was sometimes responsible for
10 turning on certain computer systems in Defendants' plant, including the timekeeping system,
11 and Plaintiff could not clock in for his shift until the timekeeping system was booted up,
12 which took about 15-20 minutes. As a further example, before he could clock in for his shifts,
13 Plaintiff regularly received calls and text messages from managers requiring him to respond to
14 repair and maintenance assignments. Additionally, during the relevant time period,
15 Defendants only provided Plaintiff and other non-party Aggrieved Employees with two (2)
16 timekeeping machines to clock in, thus forcing Plaintiff and other non-party Aggrieved
17 Employees to wait in line off-the-clock and under Defendants' control, time for which they
18 were not paid. For example, Plaintiff would be ready to clock in for the start of his shift, but
19 was required to wait in a line of about 20-30 employees and wait up to five (5) minutes to
20 clock in. Thus, Defendants failed to track all of the time that employees spent performing
21 work-related tasks before their shifts, and Plaintiff and other non-party Aggrieved Employees
22 received no compensation for this time.

23 51. Second, during the relevant time period, Defendants had, and continue to have,
24 a company-wide policy and/or practice of understaffing their facilities while assigning heavy
25 workloads, resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees
26 with adequate meal period coverage. Defendants also had a practice of failing to schedule
27 meal periods which, in conjunction with the assignment of heavy workloads, further caused
28 Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for

1 compliant meal periods. As a result of this lack of meal period coverage, Plaintiff and other
2 non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal
3 periods during shifts when they were entitled to receive a meal period. For example, Plaintiff
4 worked through his unpaid meal periods nearly every shift due to the heavy workload and lack
5 of coverage. Defendants did not pay Plaintiff and other non-party Aggrieved Employees for
6 the time they continued to perform tasks during their meal periods.

7 52. Third, Defendants had, and continue to have, a policy and/or practice of
8 requiring that Plaintiff and other non-party Aggrieved Employees carry company-issued
9 walkie talkies and/or their personal mobile devices, including cellular phones, to respond to
10 calls and text messages at all times. As a result, Defendants' management and other
11 employees contacted Plaintiff and other non-party Aggrieved Employees on company-issued
12 walkie talkies and/or their personal mobile devices during unpaid meal periods to discuss
13 work-related matters. For example, Plaintiff's meal periods were regularly interrupted by
14 managers and other employees calling and sending him text messages regarding work-related
15 tasks, issues, schedules, and questions. Defendants knew or should have known that Plaintiff
16 and other non-party Aggrieved Employees were performing work while off-the-clock in order
17 to meet Defendants' expectations, but failed to compensate them for this time.

18 53. Fourth, upon information and belief, Defendants' company-wide timekeeping
19 system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours
20 worked when their meal periods were shortened or interrupted, because the system locked out
21 Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period,
22 and would not permit them to clock back in from a meal period before 30 minutes had
23 elapsed. Thus, Defendants did not record all hours worked during meal periods, and Plaintiff
24 and other non-party Aggrieved Employees performed work during meal periods for which
25 they were not paid.

26 54. Defendants knew or should have known that as a result of these company-wide
27 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
28 their assigned duties off-the-clock before their shifts and during meal periods, and were

1 suffered or permitted to perform work for which they were not paid. Because Plaintiff and
2 other non-party Aggrieved Employees worked shifts of eight (8) hours or more a day, or forty
3 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
4 pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime
5 wages for all of the overtime hours they actually worked.

6 55. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
7 the balance of overtime compensation as required by California law, violates the provisions of
8 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
9 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
10 558 and/or 2699(a), (f), and (k).

11 **FAILURE TO PAY MINIMUM WAGES**

12 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

13 56. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
14 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
15 to be paid to employees, and the payment of a wage less than the minimum so fixed is
16 unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time
17 during which an employee is subject to the control of an employer, and includes all the time
18 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
19 Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

20 57. First, as set forth above, Defendants had, and continue to have, company-wide
21 policies and/or practices of requiring Plaintiff and other non-party Aggrieved Employees to
22 perform various work-related tasks while off-the-clock before their shifts. For example, as
23 stated, Plaintiff and other non-party Aggrieved Employees were required to perform work off-
24 the-clock, including turning on computers, waiting for the timekeeping system to boot up
25 before being able to clock in, responding to calls and text messages from managers, and
26 waiting in a line of employees to clock in for the start of their shifts, but Defendants did not
27 compensate them for this time.

28 58. Second, as also stated above, due to Defendants' policies and/or practices of

1 understaffing, assigning heavy workloads, failing to schedule meal periods, requiring
2 employees to respond to calls at all times, and subsequent lack of meal period coverage,
3 Plaintiff and other non-party Aggrieved Employees were impeded from taking all
4 uninterrupted meal periods to which they were entitled and were required to work off-the-
5 clock during meal periods, have their meal periods interrupted, and/or were otherwise not
6 relieved of all duties during unpaid meal periods. Additionally, as stated, Defendants'
7 company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved
8 Employees from entering time worked during meal periods because the system locked out
9 Plaintiff and other non-party Aggrieved Employees for a full 30 minutes. Thus, Defendants
10 systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual
11 hours worked during unpaid meal periods because these hours were not always correctly
12 recorded.

13 59. Defendants did not pay minimum wages for all hours worked by Plaintiff and
14 other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
15 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
16 those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
17 1194, 1197, and 1198.

18 60. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
20 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

24 61. At all relevant times herein set forth, the applicable IWC Wage Order and
25 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
26 other non-party Aggrieved Employees' employment by Defendants.

27 62. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is
3 not more than six (6) hours, the meal period may be waived by mutual consent of both the
4 employer and the employee. Under California law, first meal periods must start after no more
5 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 63. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 64. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
10 and the applicable IWC Wage Order also require employers to provide a second meal period
11 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
12 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
13 total hours worked is no more than twelve (12) hours, the second meal period may be waived
14 by mutual consent of the employer and the employee only if the first meal period was not
15 waived.

16 65. First, during the relevant time period, as stated, Defendants had, and continue
17 to have, a company-wide policy and/or practice of understaffing while assigning heavy
18 workloads, which has resulted in a lack of meal period coverage and prevented Plaintiff and
19 other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to
20 which they were entitled. Further, as also stated, Defendants had a company-wide practice
21 and/or policy of failing to schedule meal periods, which further caused Plaintiff and other
22 non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods.
23 As a result, Plaintiff and other non-party Aggrieved Employees had to work through all or part
24 of their meal periods, had their meal periods interrupted, and/or had to wait extended periods
25 of time before taking meal periods. For example, as stated, Plaintiff regularly worked straight
26 through his meal periods in order to keep up with the tasks that Defendants' managers
27 assigned to him.

28 66. Second, as stated, Defendants had a policy and/or practice of requiring that

1 Plaintiff and other non-party Aggrieved Employees respond to calls from managers on
2 company-issued walkie talkies and/or their personal mobile devices at all times, even during
3 unpaid meal periods. For example, Plaintiff's meal periods were interrupted by his managers
4 and other employees calling to discuss his assignments and work-related issues.

5 67. Third, as stated, Defendants' company-wide timekeeping system prevented
6 Plaintiff and other non-party Aggrieved Employees from recording when their meal periods
7 were shortened or interrupted, because the system locked out Plaintiff and other non-party
8 Aggrieved Employees once they clocked out for a meal period, and would not permit them to
9 clock back in from a meal period before 30 minutes had elapsed. Plaintiff and other non-party
10 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled
11 to meal periods and were not relieved of all duties.

12 68. At all times herein mentioned, Defendants knew or should have known that, as
13 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
14 from being relieved of all duties and required to perform some of their assigned duties during
15 meal periods. Defendants further knew or should have known that Defendants did not pay
16 Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods
17 were missed, shortened, interrupted, and/or late.

18 69. Moreover, Defendants engaged in a company-wide practice and/or policy of
19 not paying meal period premiums owed when compliant meal periods are not provided.
20 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
21 have not received premium pay for missed, late, and interrupted meal periods. As a result,
22 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees compliant
23 meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed
24 to pay the full meal period premiums due.

25 70. Defendants' conduct violates the applicable IWC Wage Order, and California
26 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
27 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
28 558 and/or 2699(a), (f), and (k).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

71. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

72. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

73. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

74. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

75. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide policies and practices, including understaffing and assigning heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees from being

1 able to take rest periods. Defendants also failed to schedule rest periods, which, coupled with
2 Defendants' failure to provide adequate rest period coverage further led to Plaintiff and other
3 non-party Aggrieved Employees not being authorized and permitted to take rest periods. In
4 addition, as stated, Defendants' company-wide practice of requiring that Plaintiff and other
5 non-party Aggrieved Employees carry company-issued walkie-talkies and/or their personal
6 mobile devices to respond to work-related questions and requests prevented Plaintiff and other
7 non-party Aggrieved Employees from being able to take rest periods.

8 76. Furthermore, during the relevant time period, Defendants maintained a
9 company-wide on-premises rest period policy, which mandated that Plaintiff and other non-
10 party Aggrieved Employees remain on the work premises during their rest periods. Because
11 Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises
12 during rest periods, they were denied the ability to use their rest periods freely for their own
13 purposes, such as running personal errands. Thus, Defendants effectively maintained control
14 over Plaintiff and other non-party Aggrieved Employees during rest periods.

15 77. As a result of Defendants' practices and policies, Plaintiff and other non-party
16 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
17 excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled.
18 For example, Plaintiff sometimes had to forgo rest periods or have his rest periods cut short
19 due to the heavy workload, understaffing, and Defendants' failure to schedule rest periods for
20 employees.

21 78. Defendants have also engaged in a company-wide practice and/or policy of not
22 paying rest period premiums owed when compliant rest periods are not authorized and
23 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
24 Employees have not received premium pay for all missed rest periods. As a result,
25 Defendants denied Plaintiff and other non-party Aggrieved Employees rest periods and failed
26 to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and
27 the applicable IWC Wage Order.

28 79. Defendants' conduct violates the applicable IWC Wage Order and California

1 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
2 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
3 558 and/or 2699(a), (f), and (k).

4 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
5 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

6 80. At all relevant times herein set forth, California Labor Code section 226(a)
7 provides that every employer shall furnish each of his or her employees an accurate and
8 complete itemized wage statement in writing, including, but not limited to, the name and
9 address of the legal entity that is the employer, the inclusive dates of the pay period, total
10 hours worked, and all applicable rates of pay.

11 81. At all relevant times, Defendants have knowingly and intentionally provided
12 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
13 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
14 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total
15 hours worked; net wages earned; and all applicable hourly rates in effect during the pay
16 period, including rates of pay for overtime wages, and the corresponding number of hours
17 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
18 226(a)(5), and 226(a)(9).

19 82. Because Defendants did not record the time Plaintiff and other non-party
20 Aggrieved Employees spent working off the clock and deducted time from their records for
21 meal periods that were interrupted and/or missed (and therefore time for which they should
22 have been paid), Defendants did not list the correct amount of gross wages and net wages
23 earned by Plaintiff and other non-party Aggrieved Employees in compliance with sections
24 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
25 number of hours worked by Plaintiff and other non-party Aggrieved Employees, in violation
26 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the
27 pay period and the corresponding accurate number of hours worked at each hourly rate, in
28 violation of section 226(a)(9).

1 83. The wage statement deficiencies also include, among other things, failing to list
2 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
3 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
4 for which employees were paid; failing to list the name of the employee and only the last four
5 digits of his or her social security number or an employee identification number other than a
6 social security number; failing to list the name and address of the legal entity that is the
7 employer; and/or failing to state all hours worked as a result of not recording or stating hours
8 worked off-the-clock.

9 84. California Labor Code section 1174(d) provides that “[e]very person employing
10 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
11 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
12 plants or establishments at which employees are employed, payroll records showing the hours
13 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
14 applicable piece rate paid to, employees employed at the respective plants or
15 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
16 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
17 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
18 as a result of failing to record the off-the-clock hours that they worked.

19 85. California Labor Code section 1198 provides that the maximum hours of work
20 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
21 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
22 employment of any employees for longer hours than those fixed by the order or under
23 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
24 Wage Order, employers are required to keep accurate time records showing when the
25 employee begins and ends each work period and meal period. During the relevant time
26 period, Defendants engaged in company-wide practices and/or policies of failing to record
27 actual hours worked, and thereby failed to keep accurate records of work period and meal
28 period start and end times for Plaintiff and other non-party Aggrieved Employees, in violation

1 of section 1198.

2 86. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
3 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
4 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

5 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

6 **VIOLATION OF LABOR CODE SECTION 204**

7 87. At all relevant times herein set forth, California Labor Code section 204
8 requires that all wages earned by any person in any employment between the 1st and the 15th
9 days, inclusive, of any calendar month, other than those wages due upon termination of an
10 employee, are due and payable between the 16th and the 26th day of the month during which
11 the labor was performed. Labor Code section 204 further provides that all wages earned by
12 any person in any employment between the 16th and the last day, inclusive, of any calendar
13 month, other than those wages due upon termination of an employee, are due and payable
14 between the 1st and the 10th day of the following month.

15 88. At all times relevant herein, Labor Code section 204 provides that all wages
16 earned for labor in excess of the normal work period shall be paid no later than the payday for
17 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
18 204 provides that the requirements of this section are deemed satisfied by the payment of
19 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
20 seven (7) calendar days following the close of the payroll period.

21 89. During the relevant time period, Defendants willfully failed to pay Plaintiff and
22 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
23 wages, minimum wages, and/or meal and rest period premiums, within the time periods
24 specified by California Labor Code section 204.

25 90. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
26 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

3 91. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
4 that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
6 her employment, his or her wages shall become due and payable not later than seventy-two
7 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
8 his or her intention to quit, in which case the employee is entitled to his or her wages at the
9 time of quitting.

10 92. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
11 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
12 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
13 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
14 leaving Defendants' employ.

15 93. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
16 who are no longer employed by Defendants their wages earned and unpaid at the time of
17 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
18 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
19 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
20 2699(a), (f), and (k).

21 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

22 **VIOLATION OF LABOR CODE SECTION 2802**

23 94. At all times herein set forth, California Labor Code section 2802 provides that
24 an employer must reimburse employees for all necessary expenditures and losses incurred by
25 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
26 to prevent employers from passing off their cost of doing business and operating expenses on
27 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
28 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen

1 tools or equipment are required by the employer or they are necessary to the performance of a
2 job, such tools and equipment shall be provided and maintained by the employer, except that
3 an employee whose wages are at least two (2) times the minimum wage may provide and
4 maintain hand tools and equipment customarily required by the particular trade or craft.”

5 95. During the relevant time period, Defendants, on a company-wide basis,
6 required Plaintiff and other non-party Aggrieved Employees to use their personal mobile
7 devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job
8 duties, but failed to reimburse them for the costs of their work-related mobile device expenses.
9 For example, Plaintiff and other non-party Aggrieved Employees used their personal mobile
10 devices to communicate with Defendants’ management regarding repair tasks and work-
11 related matters. Although Defendants required Plaintiff and other non-party Aggrieved
12 Employees to utilize their personal mobile devices and/or mobile data to carry out their work-
13 related responsibilities, Defendants failed to reimburse them for these costs.

14 96. Defendants could have provided Plaintiff and other non-party Aggrieved
15 Employees with the actual equipment for use on the job, such as company mobile devices; or,
16 Defendants could have reimbursed employees for their mobile device usage. Instead,
17 Defendants passed these operating costs onto Plaintiff and other non-party Aggrieved
18 Employees.

19 97. Defendants’ company-wide policy and/or practice of not reimbursing
20 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
21 and other non-party Aggrieved Employees violates California Labor Code section 2802.
22 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

24 **REQUEST FOR JURY TRIAL**

25 Plaintiff requests a trial by jury.

26 **PRAYER FOR RELIEF**

27 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
28 judgment against Defendants, jointly and severally, as follows:

1 1. For civil penalties and attorneys’ fees in excess of twenty-five thousand dollars
2 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
3 amount.

4 **As to the First Cause of Action**

5 2. That the Court declare, adjudge and decree that Defendants violated the
6 following California Labor Code provisions as to Plaintiff and other non-party Aggrieved
7 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
8 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
9 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
10 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
11 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
12 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
13 termination); and 2802 (by failing to reimburse business expenses);

14 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
15 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202,
16 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

17 4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
18 2699(k) to bring Defendants into compliance with the requirements of California Labor Code
19 sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
20 1198, and 2802;

21 5. For attorneys’ fees and costs pursuant to California Labor Code section
22 2699(k)(1), and any and all other relevant statutes, for Defendants’ violations of California
23 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12,
24 1194, 1197, 1198, and 2802;

25 6. For pre-judgment and post-judgment interest as provided by law; and

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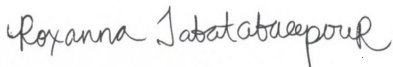
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7. For such other and further relief as the Court may deem equitable and appropriate.

Dated: February 14, 2025

Respectfully submitted,

Capstone Law APC

By: 
Roxanna Tabatabaeepour
Ryan Tish
Alexander Wallin

Attorneys for Plaintiff Juan Toro

EXHIBIT “1”



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November 26, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Juan Toro v. Altium Packaging LP*

Dear PAGA Administrator:

This office represents Juan Toro in connection with his claims under the California Labor Code. Mr. Toro was an employee of ALTIUM PACKAGING LP ("ALTIUM").

The employer may be contacted directly at the address below:

ALTIUM PACKAGING LP
2500 WINDY RIDGE PKWY STE 1400
ATLANTA, GA 30339

Mr. Toro intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Toro seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ALTIUM as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ALTIUM employed Mr. Toro as an hourly paid, non-exempt employee from approximately September 2024 to October 2024. Mr. Toro worked for ALTIUM as an Electrical Maintenance Mechanic at its manufacturing plant in City of Industry, California. During his employment, Mr. Toro typically worked eight (8) hours to ten (10) hours or more per day and five (5) days per week. Mr. Toro was compensated approximately \$40.00 per hour. His job duties included, without limitation, installing, troubleshooting, repairing, and performing maintenance on production equipment and electrical circuits.

ALTIUM committed each of the following Labor Code violations against Mr. Toro, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

ALTIUM’s Company-Wide and Uniform Payroll and HR Practices

ALTIUM PACKAGING LP is a Delaware limited partnership and is one of the largest plastic container companies and suppliers of rigid plastic packaging. Upon information and belief, ALTIUM maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for ALTIUM in California, including Mr. Toro and other aggrieved employees. At all relevant times, ALTIUM issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Toro and other aggrieved employees, regardless of their location or position.

Upon information and belief, ALTIUM maintains a centralized Payroll department at its corporate headquarters in Atlanta, Georgia, which processes payroll for all non-exempt, hourly paid employees working for ALTIUM in California, including Mr. Toro and other aggrieved employees. Further, ALTIUM issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Mr. Toro and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, ALTIUM utilized the same methods and formulas when calculating wages due to Mr. Toro and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

During the relevant time period, ALTIUM willfully failed to pay all overtime wages owed to Mr. Toro and other aggrieved employees. During the relevant time period, Mr. Toro and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Toro’s experience and counsel’s review of those records currently available relating to Mr. Toro’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Toro reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, ALTIUM had, and continues to have, a company-wide policy and/or practice requiring Mr. Toro and other aggrieved employees to perform various work-related tasks while off-the-clock. For example, Mr. Toro was sometimes responsible for turning on certain computer systems in ALTIUM's plant, including the timekeeping system, and Mr. Toro could not clock in for his shift until the timekeeping system was booted up, which took about 15-20 minutes. As a further example, before he could clock in for his shifts, Mr. Toro regularly received calls and text messages from managers requiring him to respond to repair and maintenance assignments. Additionally, during the relevant time period, ALTIUM only provided Mr. Toro and other aggrieved employees with two (2) timekeeping machines to clock in, thus forcing Mr. Toro and other aggrieved employees to wait in line off-the-clock and under ALTIUM's control, time for which they were paid. For example, Mr. Toro would be ready to clock in for the start of his shift, but was required to wait in a line of about 20-30 employees and wait up to five (5) minutes to clock in. Thus, ALTIUM failed to track all of the time that employees spent performing work-related tasks before their shifts, and Mr. Toro and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, ALTIUM had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while assigning heavy workloads, resulting in a failure to provide Mr. Toro and other aggrieved employees with adequate meal period coverage. ALTIUM also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Toro and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Toro and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Toro worked through his unpaid meal periods nearly every shift due to the heavy workload and lack of coverage. ALTIUM did not pay Mr. Toro and other aggrieved employees for the time they continued to perform tasks during their meal periods.

Third, ALTIUM had, and continues to have, a policy and/or practice of requiring that Mr. Toro and other aggrieved employees carry company-issued walkie talkies and/or their personal mobile devices, including cellular phones, to respond to calls and text messages at all times. As a result, ALTIUM's management and other employees contacted Mr. Toro and other aggrieved employees on company-issued walkie talkies and/or their personal mobile devices during unpaid meal periods to discuss work-related matters. For example, Mr. Toro's meal periods were regularly interrupted by managers and other employees calling and sending him text messages regarding work-related tasks, issues, schedules, and questions. ALTIUM knew or should have known that Mr. Toro and other aggrieved employees were performing work while off-the-clock in order to meet ALTIUM's expectations, but failed to compensate them for this time.

Fourth, upon information and belief, ALTIUM's company-wide timekeeping system prevented Mr. Toro and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Toro and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, ALTIUM did not record all hours worked during meal periods, and Mr. Toro and other aggrieved employees performed work during meal periods for which they were not paid.

ALTIUM knew or should have known that as a result of these company-wide practices and/or policies, Mr. Toro and other aggrieved employees were performing their assigned duties off-the-clock before their shifts and during meal periods, and were suffered or permitted to perform work for

which they were not paid. Because Mr. Toro and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Toro and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

ALTIUM's failure to pay Mr. Toro and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Toro and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ALTIUM into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11010(2)(G) (defining "Hours Worked").

First, as set forth above, ALTIUM had, and continues to have, company-wide policies and/or practices of requiring Mr. Toro and other aggrieved employees to perform various work-related tasks while off-the-clock before their shifts. For example, as stated, Mr. Toro and other aggrieved employees were required to perform work off-the-clock, including turning on computers, waiting for the timekeeping system to boot up before being able to clock in, responding to calls and text messages from managers, and waiting in a line of employees to clock in for the start of their shifts, but ALTIUM did not compensate them for this time.

Second, as also stated above, due to ALTIUM's policies and/or practices of understaffing, assigning heavy workloads, failing to schedule meal periods, requiring employees to respond to calls at all times, and subsequent lack of meal period coverage, Mr. Toro and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Additionally, as stated, ALTIUM's company-wide timekeeping system prevented Mr. Toro and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Toro and other aggrieved employees for a full 30 minutes. Thus, ALTIUM systematically failed to pay Mr. Toro and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

ALTIUM did not pay at least minimum wages for all hours worked by Mr. Toro and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, ALTIUM did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, ALTIUM regularly failed to pay at least minimum wages to Mr. Toro and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections

1182.12, 1194, 1197, 1197.1, and 1198. Mr. Toro and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ALTIUM into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, ALTIUM had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Toro and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as also stated, ALTIUM had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Toro and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Toro and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Toro regularly worked straight through his meal periods in order to keep up with the tasks that ALTIUM's managers assigned to him.

Second, as stated, ALTIUM had a policy and/or practice of requiring that Mr. Toro and other aggrieved employees respond to calls from managers on company-issued walkie talkies and/or their personal mobile devices at all times, even during unpaid meal periods. For example, Mr. Toro's meal periods were interrupted by his managers and other employees calling to discuss his assignments and work-related issues.

Third, as stated, ALTIUM's company-wide timekeeping system prevented Mr. Toro and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Toro and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Mr. Toro and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, ALTIUM knew or should have known that, as a result of these policies, Mr. Toro and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. ALTIUM further knew or should have known that ALTIUM did not pay Mr. Toro and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Moreover, ALTIUM engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Toro and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, ALTIUM failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Toro and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ALTIUM into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, ALTIUM regularly failed to authorize and permit Mr. Toro and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ALTIUM's company-wide policies and practices, including understaffing and assigning heavy workloads, prevented Mr. Toro and other aggrieved employees from being able to take rest periods. ALTIUM also failed to schedule rest periods, which, coupled with ALTIUM's failure to provide adequate rest period coverage further led to Mr. Toro and other aggrieved employees not being authorized and permitted to take rest periods. In addition, as stated, ALTIUM's company-wide practice of requiring that Mr. Toro and other aggrieved employees carry company-issued walkie-talkies and/or their personal mobile devices to respond to work-related questions and requests prevented Mr. Toro and other aggrieved employees from being able to take rest periods.

Furthermore, during the relevant time period, ALTIUM maintained a company-wide on-premises rest period policy, which mandated that Mr. Toro and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Toro and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, ALTIUM effectively maintained control over Mr. Toro and/or other aggrieved employees during rest periods.

As a result of ALTIUM's practices and policies, Mr. Toro and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Toro sometimes had to forgo rest periods or have his rest periods cut short due to the heavy workload, understaffing, and ALTIUM's failure to schedule rest periods for employees.

ALTIUM has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Toro and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, ALTIUM failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Toro and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ALTIUM into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ALTIUM has knowingly and intentionally provided Mr. Toro and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ALTIUM issued uniform wage statements to Mr. Toro and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and rest period premium wages, and the corresponding number of hours worked at each hourly rate. Specifically, ALTIUM violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because ALTIUM did not record the time Mr. Toro and other aggrieved employees spent working off the clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), ALTIUM did not list the correct

amount of gross wages and net wages earned by Mr. Toro and other aggrieved employees in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, ALTIUM failed to accurately list the total number of hours worked by Mr. Toro and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” At all relevant times, and in violation of Labor Code section 1174(d), ALTIUM willfully failed to maintain accurate payroll records for Mr. Toro and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, ALTIUM engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Toro and other aggrieved employees, in violation of section 1198.

Because ALTIUM failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Toro and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Toro and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Toro and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring ALTIUM into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 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 the 26th day of the month during which the labor was performed, and 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. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, ALTIUM willfully failed to pay Mr. Toro and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Toro and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ALTIUM into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

ALTIUM willfully failed to pay Mr. Toro and other aggrieved employees who are no longer employed by ALTIUM the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving ALTIUM's employ.

Mr. Toro and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ALTIUM into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools

and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, ALTIUM, on a company-wide basis, required Mr. Toro and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Toro and other aggrieved employees used their personal mobile devices to communicate with ALTIUM’s management regarding repair tasks and work-related matters. Although ALTIUM required Mr. Toro and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, ALTIUM failed to reimburse them for these costs.

ALTIUM could have provided Mr. Toro and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices; or, ALTIUM could have reimbursed employees for their mobile device usage. Instead, ALTIUM passed these operating costs onto Mr. Toro and other aggrieved employees.

Thus, ALTIUM had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Toro and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring ALTIUM into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” ALTIUM, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Toro’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Toro seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Toro acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against ALTIUM for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Toro seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

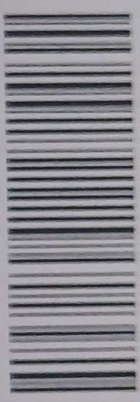
Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: ALTIUM PACKAGING LP (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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