

SUM-100

SUMMONS ON FIRST AMENDED COMPLAINT
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

BORRMANN METAL CENTER, a California corporation; CONTRACTORS STEEL HOLDING, LLC, a Delaware corporation; (additional parties attachment is attached)

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

UVALDO CHAVEZ, individually, and on behalf of other members of the general public similarly situated;

Electronically FILED by
Superior Court of California,
County of Los Angeles
3/20/2024 3:47 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By R. Lozano, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles Superior Court
Stanley Mosk Courthouse - 111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):
22STCV34521

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. T: (619) 599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 03/20/2024 Clerk, by David W. Slayton, Executive Officer/Clerk of Court, Deputy (Secretario) R. Lozano (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

SHORT TITLE: Chavez v. Borrman Metal Center, et al.	CASE NUMBER: 22STCV34521
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

CONTRACTORS STEEL COMPANY, a Michigan corporation; UPG ENTERPRISES, LLC, a Delaware limited liability company; UP INVESTMENT HOLDINGS, LLC, a Delaware limited liability company; and DOES 1 through 100, inclusive,

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Attorneys for Plaintiff UVALDO CHAVEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

UVALDO CHAVEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

BORRMANN METAL CENTER, a
California corporation; CONTRACTORS
STEEL HOLDING, LLC, a Delaware
corporation; CONTRACTORS STEEL
COMPANY, a Michigan corporation; UPG
ENTERPRISES, LLC, a Delaware limited
liability company; UP INVESTMENT
HOLDINGS, LLC, a Delaware limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 22STCV34521

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage

FILED
Superior Court of California
County of Los Angeles

03/20/2024

David W. Slayton, Executive Officer / Clerk of Court

By: M. Tavakoli Deputy

- Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
 - (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
 - (10) Violation of California Labor Code § 221 (Unlawful Deductions From Wages)
 - (11) Violation of California Business & Professions Code §§ 17200, et seq.
 - (12) Violation of The Private Attorneys General Act Labor Code §§ 2698 et seq.

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff UVALDO CHAVEZ (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Los Angeles. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of Los Angeles.

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PARTIES

5. Plaintiff UVALDO CHAVEZ is an individual residing in the State of California.

6. Defendant BORRMANN METAL CENTER, at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

7. Defendant BORRMANN METAL CENTER, INC. at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Los Angeles.

8. At all relevant times, Defendant BORRMANN METAL CENTER was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

9. Defendant CONTRACTORS STEEL HOLDING, LLC, at all times herein mentioned, was and is, upon information and belief, a Delaware corporation.

10. Defendant CONTRACTORS STEEL COMPANY, at all times herein mentioned, was and is, upon information and belief, a Michigan corporation.

11. Defendant UPG ENTERPRISES, LLC, at all times herein mentioned, was and is, upon information and belief, a Delaware limited liability company.

12. Defendant UP INVESTMENT HOLDINGS, LLC, at all times herein mentioned, was and is, upon information and belief, a Delaware limited liability company.

13. At all times herein relevant, Defendants BORRMANN METAL CENTER, INC.; CONTRACTORS STEEL HOLDING, LLC; CONTRACTORS STEEL COMPANY, UPG ENTERPRISES, LLC; and UP INVESTMENT HOLDINGS, LLC and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly

1 committed with the ratification, knowledge, permission, encouragement, authorization and/or
2 consent of each defendant designated as a DOE herein.

3 14. The true names and capacities, whether corporate, associate, individual or
4 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said
5 defendants by such fictitious names. Plaintiff is informed and believes, and based on that
6 information and belief alleges, that each of the defendants designated as a DOE is legally
7 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
8 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
9 Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities
10 when the same have been ascertained.

11 15. Defendants BORRMANN METAL CENTER INC.; CONTRACTORS
12 STEEL HOLDING, LLC; CONTRACTORS STEEL COMPANY, UPG ENTERPRISES, LLC;
13 and UP INVESTMENT HOLDINGS, LLC and DOES 1 through 100 will hereinafter collectively
14 be referred to as “Defendants.”

15 16. Plaintiff further alleges that Defendants directly or indirectly controlled or
16 affected the working conditions, wages, working hours, and conditions of employment of
17 Plaintiff and the other class members so as to make each of said Defendants employers liable
18 under the statutory provisions set forth herein.

19 **CLASS ACTION ALLEGATIONS**

20 17. Plaintiff bring this action on his own behalf and on behalf of all other members
21 of the general public similarly situated, and, thus, seeks class certification under California Code
22 of Civil Procedure section 382.

23 18. The proposed class is defined as follows:

24 All non-exempt employees who are or previously were employed by worked for
25 Defendant Borrmann Metal Center, Inc. and performed work in California
26 between October 27, 2018 through February 29, 2024.

27 **Subclass A:** All class members who were subject to Defendants’ practice of
28 rounding time recorded for purposes of calculating compensation for time worked

or for calculating meal periods.

Subclass B: All class members who were required by Defendants to stay on Defendants' premises for rest breaks.

19. Plaintiff reserves the right to establish additional subclasses as appropriate.

20. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action

1 will advance public policy objectives. Employers of this great state violate
2 employment and labor laws every day. Current employees are often afraid
3 to assert their rights out of fear of direct or indirect retaliation. However,
4 class actions provide the class members who are not named in the
5 complaint anonymity that allows for the vindication of their rights.

6 21. There are common questions of law and fact as to the class members that
7 predominate over questions affecting only individual members. The following common
8 questions of law or fact, among others, exist as to the members of the class:

- 9 a. Whether Defendants' failure to pay wages, without abatement or
10 reduction, in accordance with the California Labor Code, was willful;
- 11 b. Whether Defendants' had a corporate policy and practice of failing to pay
12 their hourly-paid or non-exempt employees within the State of California
13 for all hours worked and missed (short, late, interrupted, and/or missed
14 altogether) meal periods and rest breaks in violation of California law;
- 15 c. Whether Defendants required Plaintiff and the other class members to
16 work over eight (8) hours per day and/or over forty (40) hours per week
17 and failed to pay the legally required overtime compensation to Plaintiff
18 and the other class members;
- 19 d. Whether Defendants deprived Plaintiff and the other class members of
20 meal and/or rest periods or required Plaintiff and the other class members
21 to work during meal and/or rest periods without compensation;
- 22 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
23 other class members for all hours worked;
- 24 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
25 class members within the required time upon their discharge or
26 resignation;
- 27 g. Whether Defendants failed to timely pay all wages due to Plaintiff and the
28 other class members during their employment;

- 1 h. Whether Defendants complied with wage reporting as required by the
2 California Labor Code; including, *inter alia*, section 226;
- 3 i. Whether Defendants kept complete and accurate payroll records as
4 required by the California Labor Code, including, *inter alia*, section
5 1174(d);
- 6 j. Whether Defendants failed to reimburse Plaintiff and the other class
7 members for necessary business-related expenses and costs;
- 8 k. Whether Defendants' conduct was willful or reckless;
- 9 l. Whether Defendants engaged in unfair business practices in violation of
10 California Business & Professions Code section 17200, et seq.;
- 11 m. The appropriate amount of damages, restitution, and/or monetary penalties
12 resulting from Defendants' violation of California law; and
- 13 n. Whether Plaintiff and the other class members are entitled to
14 compensatory damages pursuant to the California Labor Code.

15 **GENERAL ALLEGATIONS**

16 22. At all relevant times set forth herein, Defendants employed Plaintiff and other
17 persons as hourly-paid or non-exempt employees within the State of California, including the
18 County of Los Angeles.

19 23. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
20 exempt employee, from approximately November 2019 to approximately April 2020, in the State
21 of California.

22 24. Defendants hired Plaintiff and the other class members, classified them as hourly-
23 paid or non-exempt employees, and failed to compensate them for all hours worked and missed
24 meal periods and/or rest breaks. Defendants required Plaintiff and the Class Members to perform
25 off-the-clock pre and post-shift work in addition to off-the-clock work during meal breaks.

26 25. Defendants had the authority to hire and terminate Plaintiff and the other class
27 members, to set work rules and conditions governing Plaintiff's and the other class members'
28 employment, and to supervise their daily employment activities.

1 26. Defendants exercised sufficient authority over the terms and conditions of
2 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff
3 and the other class members.

4 27. Defendants directly hired and paid wages and benefits to Plaintiff and the other
5 class members.

6 28. Defendants continue to employ hourly-paid or non-exempt employees within the
7 State of California.

8 29. Plaintiff and the other class members worked over eight (8) hours in a day, and/or
9 forty (40) hours in a week during their employment with Defendants.

10 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
12 employees within the State of California. This pattern and practice involved, *inter alia*, failing
13 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest
14 breaks in violation of California law.

15 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and the other class members were entitled to receive
17 certain wages for overtime compensation and that they were not receiving accurate overtime
18 compensation for all overtime hours worked. Defendants failed to include non-discretionary
19 bonuses and commissions when calculating the regular rate of pay when paying overtime wages,
20 meal period premiums, and sick pay, and therefore failed to pay overtime wages, meal period
21 premiums, and sick pay at the legally-required rate of pay. These non-discretionary bonuses and
22 commissions included, *inter alia*, sign on bonus, bonus, referral bonus, monthly commission,
23 monthly incentive pay, monthly performance bonus, B-Bonus, monthly additional earnings, and
24 C-Commission.

25 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 failed to provide Plaintiff and the other class members all required rest and meal periods during
27 the relevant time period as required under the Industrial Welfare Commission Wage Orders and
28 thus they are entitled to any and all applicable penalties. Defendants regularly violated the law

1 by (a) failing to provide meal periods, (b) providing late meal periods, (c) providing short meal
2 periods, and/or (d) requiring employees to work through their meal periods. Defendants'
3 rigorous workload requirements and understaffing meant that Plaintiff and Class Members were
4 forced to take late meals, work through their meal periods and/or get interrupted during their
5 meal breaks, to complete various tasks. Defendants also failed to provide second meal breaks
6 on shifts exceeding 10 hours. Defendants prohibited Plaintiff and Class Members from leaving
7 the premises for their meal breaks.

8 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
11 member's regular rate of pay when a meal period was missed, and they did not receive all meal
12 periods or payment of one additional hour of pay at Plaintiff's and the other class member's
13 regular rate of pay when a meal period was missed.

14 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and the other class members were entitled to receive
16 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
17 member's regular rate of pay when a rest period was missed, and they did not receive all rest
18 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
19 regular rate of pay when a rest period was missed. Defendants did not provide Plaintiff and Class
20 Members with rest breaks, or required them to work through rest breaks, or interrupted them
21 during their rest breaks, and, at times when Plaintiff and/or Class Members worked a 12-hour
22 shift, only provided 15 minutes total as a rest break for the entire shift.

23 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 required Plaintiff and the other class members to remain on Defendants' premises during
25 purported rest periods, thereby failing to relieve them of all employer control.

26 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other class members were entitled to receive
28 at least minimum wages for compensation and that they were not receiving at least minimum

1 wages for all hours worked.

2 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 rounded the work time as to both hours worked and meal breaks recorded by Plaintiff and the
4 other class members in a manner that was not fair and neutral on its face and/or that favored
5 Defendants over time, resulting in Plaintiff and the other class members being underpaid for
6 their time worked. Defendants failed to accurately record all hours worked by Plaintiff and the
7 Class Members. Defendants also automatically deducted between 30 minutes and 1 hour of time
8 from Plaintiff and Class Members' timecards for their meal period, regardless of the actual length
9 of the meal period or whether any meal period was taken at all, resulting in failure to accurately
10 record all hours worked and failure to pay for all hours worked.

11 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiff and the other class members were entitled to receive
13 all wages owed to them upon discharge or resignation, including overtime and minimum wages
14 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
15 them at the time of their discharge or resignation.

16 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and the other class members were entitled to receive
18 all wages owed to them during their employment. Plaintiff and the other class members did not
19 receive payment of all wages, including overtime and minimum wages and meal and rest period
20 premiums, within any time permissible under California Labor Code section 204.

21 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and the other class members were entitled to receive
23 complete and accurate wage statements in accordance with California law, but, in fact, they did
24 not receive complete and accurate wage statements from Defendants. The deficiencies included,
25 *inter alia*, the failure to include the total number of hours worked by Plaintiff and the other class
26 members, failure to identify the address of the legal entity which was the employer, and failure
27 to list the start/end dates of the pay period.

28 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 knew or should have known that Defendants had to keep complete and accurate payroll records
2 for Plaintiff and the other class members in accordance with California law, but, in fact, did not
3 keep complete and accurate payroll records.

4 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Plaintiff and the other class members were entitled to
6 reimbursement for necessary business-related expenses.

7 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that they had a duty to compensate Plaintiff and the other class
9 members pursuant to California law, and that Defendants had the financial ability to pay such
10 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
11 to Plaintiff and the other class members that they were properly denied wages, all in order to
12 increase Defendants' profits.

13 44. During the relevant time period, Defendants failed to pay overtime wages to
14 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other class
15 members were required to work more than eight (8) hours per day and/or forty (40) hours per
16 week without overtime compensation for all overtime hours worked.

17 45. During the relevant time period, Defendants failed to provide all requisite
18 uninterrupted meal and rest periods to Plaintiff and the other class members.

19 46. During the relevant time period, Defendants required Plaintiff and the other class
20 members to remain on Defendants' premises during purported rest periods, thereby failing to
21 relieve them of all employer control.

22 47. During the relevant time period, Defendants failed to pay Plaintiff and the other
23 class members at least minimum wages for all hours worked.

24 48. During the relevant time period, Defendants rounded the work time as to both
25 hours worked and meal breaks recorded by Plaintiff and the other class members in a manner
26 that was not fair and neutral on its face and/or that favored Defendants over time, resulting in
27 Plaintiff and the other class members being underpaid for their time worked.

28 49. During the relevant time period, Defendants failed to pay Plaintiff and the other

1 class members all wages owed to them upon discharge or resignation.

2 50. During the relevant time period, Defendants failed to pay Plaintiff and the other
3 class members all wages within any time permissible under California law, including, *inter alia*,
4 California Labor Code section 204.

5 51. During the relevant time period, Defendants failed to provide complete or
6 accurate wage statements to Plaintiff and the other class members.

7 52. During the relevant time period, Defendants failed to keep complete or accurate
8 payroll records for Plaintiff and the other class members.

9 53. During the relevant time period, Defendants failed to reimburse Plaintiff and the
10 other class members for all necessary business-related expenses and costs. Defendant failed to
11 reimburse Plaintiff and other employees for the use of their personal cell phone for work
12 purposes and the purchase of work-related tools. Plaintiff and Class Members also purchased
13 work boots, gloves, back braces and digital gauges, items that were necessary for them to
14 perform their work duties. Defendants gave employees “cheap” gloves that would result in the
15 employees getting cuts. Although the employees were given gauges, they too were cheap and
16 would not give accurate readings. Plaintiff and Class Members were forced to purchase digital
17 gauges that were much more accurate. Plaintiff and Class Members also took it upon themselves
18 to thus buy thicker gloves.

19 54. Defendants unlawfully deducted uniform expenses Plaintiff and Class Members’
20 wages. Defendants charged Plaintiff and Class Members for laundering of the uniform they
21 were required to wear. With respect to Plaintiff, Defendants deducted \$16.92 from Plaintiff’s
22 pay from January 2020 to March 2021 for uniform expenses

23 55. During the relevant time period, Defendants failed to properly compensate
24 Plaintiff and the other class members pursuant to California law in order to increase Defendants’
25 profits.

26 56. California Labor Code section 218 states that nothing in Article 1 of the Labor
27 Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due
28 to him [or her] under this article.”

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

4 57. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
5 through 56, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 58. California Labor Code section 1198 and the applicable Industrial Welfare
8 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
9 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
10 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

11 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
12 were required to pay Plaintiff and the other class members employed by Defendants, and
13 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
14 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than
15 forty (40) hours in a workweek.

16 60. The applicable IWC Wage Order further provides that Defendants are and were
17 required to pay Plaintiff and the other class members overtime compensation at a rate of two
18 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

19 61. California Labor Code section 510 codifies the right to overtime compensation at
20 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
21 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
22 work, and to overtime compensation at twice the regular hourly rate for hours worked in excess
23 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

24 62. During the relevant time period, Plaintiff and the other class members worked in
25 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

26 63. During the relevant time period, Defendants intentionally and willfully failed to
27 pay overtime wages owed to Plaintiff and the other class members.

28 64. Defendants’ failure to pay Plaintiff and the other class members the unpaid

1 balance of overtime compensation, as required by California laws, violates the provisions of
2 California Labor Code sections 510 and 1198, and is therefore unlawful.

3 65. Pursuant to California Labor Code section 1194, Plaintiff and the other class
4 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
5 attorneys' fees.

6 **SECOND CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 226.7 and 512(a))**

8 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

9 66. Plaintiff incorporates by reference the allegations contained in paragraphs 1
10 through 65, and each and every part thereof with the same force and effect as though fully set
11 forth herein.

12 67. At all relevant times, the IWC Order and California Labor Code sections 226.7
13 and 512(a) were applicable to Plaintiff's and the other class members' employment by
14 Defendants.

15 68. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any meal or rest period mandated by an
17 applicable order of the California IWC.

18 69. At all relevant times, the applicable IWC Wage Order and California Labor Code
19 section 512(a) provide that an employer may not require, cause or permit an employee to work
20 for a work period of more than five (5) hours per day without providing the employee with a
21 meal period of not less than thirty (30) minutes, except that if the total work period per day of the
22 employee is no more than six (6) hours, the meal period may be waived by mutual consent of
23 both the employer and employee.

24 70. At all relevant times, the applicable IWC Wage Order and California Labor Code
25 section 512(a) further provide that an employer may not require, cause or permit an employee to
26 work for a work period of more than ten (10) hours per day without providing the employee with
27 a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total
28 hours worked is no more than twelve (12) hours, the second meal period may be waived by

1 mutual consent of the employer and the employee only if the first meal period was not waived.

2 71. During the relevant time period, Plaintiff and the other class members who were
3 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
4 legally-mandated meal periods by mutual consent, were required to work for periods longer than
5 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or
6 rest period.

7 72. During the relevant time period, Plaintiff and the other class members who were
8 scheduled to work for a period of time in excess of six (6) hours were required to work for
9 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
10 (30) minutes and/or rest period.

11 73. During the relevant time period, Defendants intentionally and willfully required
12 Plaintiff and the other class members to work during meal periods and failed to compensate
13 Plaintiff and the other class members the full meal period premium for work performed during
14 meal periods.

15 74. During the relevant time period, Defendants failed to pay Plaintiff and the other
16 class members the full meal period premium due pursuant to California Labor Code section
17 226.7.

18 75. Defendants' conduct violates applicable IWC Wage Order and California Labor
19 Code sections 226.7 and 512(a).

20 76. Pursuant to applicable IWC Wage Order and California Labor Code section
21 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
22 additional hour of pay at the employee's regular rate of compensation for each work day that the
23 meal or rest period is not provided.

24 **THIRD CAUSE OF ACTION**

25 **(Violation of California Labor Code § 226.7)**

26 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

27 77. Plaintiff incorporates by reference the allegations contained in paragraphs 1
28 through 76, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 78. At all times herein set forth, the applicable IWC Wage Order and California Labor
3 Code section 226.7 were applicable to Plaintiff's and the other class members' employment by
4 Defendants.

5 79. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any rest period mandated by an applicable
7 order of the California IWC.

8 80. At all relevant times, the applicable IWC Wage Order provides that "[e]very
9 employer shall authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period" and that the "rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof" unless the total daily work time is less than three and one-half
13 (3 ½) hours.

14 81. During the relevant time period, Defendants required Plaintiff and other class
15 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
16 period per each four (4) hour period worked.

17 82. During the relevant time period, Defendants willfully required Plaintiff and the
18 other class members to work during rest periods and failed to pay Plaintiff and the other class
19 members the full rest period premium for work performed during rest periods.

20 83. During the relevant time period, Defendants failed to pay Plaintiff and the other
21 class members the full rest period premium due pursuant to California Labor Code section 226.7.

22 84. Defendants' conduct violates applicable IWC Wage Orders and California Labor
23 Code section 226.7.

24 85. Pursuant to the applicable IWC Wage Orders and California Labor Code section
25 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
26 additional hour of pay at the employees' regular hourly rate of compensation for each work day
27 that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

3 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

4 86. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 85, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 87. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
8 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than
9 the minimum so fixed is unlawful.

10 88. During the relevant time period, Defendants failed to pay minimum wage to
11 Plaintiff and the other class members as required, pursuant to California Labor Code sections
12 1194, 1197, and 1197.1.

13 89. Defendants' failure to pay Plaintiff and the other class members the minimum
14 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
15 those sections Plaintiff and the other class members are entitled to recover the unpaid balance of
16 their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated
17 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

18 90. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class
19 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
20 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
21 minimum wages.

22 91. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
23 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
24 unpaid and interest thereon.

25 **FIFTH CAUSE OF ACTION**

26 **(Violation of California Labor Code §§ 201 and 202)**

27 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

28 92. Plaintiff incorporates by reference the allegations contained in paragraphs 1

1 through 91, and each and every part thereof with the same force and effect as though fully set
2 forth herein.

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

9 94. During the relevant time period, Defendants intentionally and willfully failed to
10 pay Plaintiff and the other class members who are no longer employed by Defendants their
11 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

12 95. Defendants' failure to pay Plaintiff and the other class members who are no longer
13 employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their
14 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

15 96. California Labor Code section 203 provides that if an employer willfully fails to
16 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
17 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
18 is commenced; but the wages shall not continue for more than thirty (30) days.

19 97. Plaintiff and the other class members are entitled to recover from Defendants the
20 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
21 pursuant to California Labor Code section 203.

22 **SIXTH CAUSE OF ACTION**

23 **(Violation of California Labor Code § 204)**

24 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

25 98. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 97, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

28 99. At all times herein set forth, California Labor Code section 204 provides that all

1 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
2 calendar month, other than those wages due upon termination of an employee, are due and
3 payable between the 16th and the 26th day of the month during which the labor was performed.

4 100. At all times herein set forth, California Labor Code section 204 provides that all
5 wages earned by any person in any employment between the 16th and the last day, inclusive, of
6 any calendar month, other than those wages due upon termination of an employee, are due and
7 payable between the 1st and the 10th day of the following month.

8 101. At all times herein set forth, California Labor Code section 204 provides that all
9 wages earned for labor in excess of the normal work period shall be paid no later than the payday
10 for the next regular payroll period.

11 102. During the relevant time period, Defendants intentionally and willfully failed to
12 pay Plaintiff and the other class members all wages due to them, within any time period
13 permissible under California Labor Code section 204.

14 103. Plaintiff and the other class members are entitled to recover all remedies available
15 for violations of California Labor Code section 204.

16 **SEVENTH CAUSE OF ACTION**

17 **(Violation of California Labor Code § 226(a))**

18 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

19 104. Plaintiff incorporates by reference the allegations contained in paragraphs 1
20 through 103, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 105. At all material times set forth herein, California Labor Code section 226(a)
23 provides that every employer shall furnish each of his or her employees an accurate itemized
24 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
25 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
26 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
27 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
28 dates of the period for which the employee is paid, (7) the name of the employee and his or her

1 social security number, (8) the name and address of the legal entity that is the employer, and (9)
2 all applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee. The deductions made from payments of wages
4 shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
5 year, and a copy of the statement or a record of the deductions shall be kept on file by the
6 employer for at least three years at the place of employment or at a central location within the
7 State of California.

8 106. Defendants have intentionally and willfully failed to provide Plaintiff and the
9 other class members with complete and accurate wage statements. The deficiencies include, but
10 are not limited to: the failure to include the total number of hours worked by Plaintiff and the
11 other class members.

12 107. As a result of Defendants' violation of California Labor Code section 226(a),
13 Plaintiff and the other class members have suffered injury and damage to their statutorily-
14 protected rights.

15 108. More specifically, Plaintiff and the other class members have been injured by
16 Defendants' intentional and willful violation of California Labor Code section 226(a) because
17 they were denied both their legal right to receive, and their protected interest in receiving,
18 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

19 109. Plaintiff and the other class members are entitled to recover from Defendants the
20 greater of their actual damages caused by Defendants' failure to comply with California Labor
21 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

22 110. Plaintiff and the other class members are also entitled to injunctive relief to ensure
23 compliance with this section, pursuant to California Labor Code section 226(h).

24 **EIGHTH CAUSE OF ACTION**

25 **(Violation of California Labor Code § 1174(d))**

26 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

27 111. Plaintiff incorporates by reference the allegations contained in paragraphs 1
28 through 110, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 112. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
3 central location in the state or at the plants or establishments at which employees are employed,
4 payroll records showing the hours worked daily by and the wages paid to, and the number of
5 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
6 respective plants or establishments. These records shall be kept in accordance with rules
7 established for this purpose by the commission, but in any case shall be kept on file for not less
8 than two years.

9 113. Defendants have intentionally and willfully failed to keep accurate and complete
10 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other
11 class members.

12 114. As a result of Defendants' violation of California Labor Code section 1174(d),
13 Plaintiff and the other class members have suffered injury and damage to their statutorily-
14 protected rights.

15 115. More specifically, Plaintiff and the other class members have been injured by
16 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
17 they were denied both their legal right and protected interest, in having available, accurate and
18 complete payroll records pursuant to California Labor Code section 1174(d).

19 **NINTH CAUSE OF ACTION**

20 **(Violation of California Labor Code §§ 2800 and 2802)**

21 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

22 116. Plaintiff incorporates by reference the allegations contained in paragraphs 1
23 through 115, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 117. Pursuant to California Labor Code sections 2800 and 2802, an employer must
26 reimburse its employee for all necessary expenditures incurred by the employee in direct
27 consequence of the discharge of his or her job duties or in direct consequence of his or her
28 obedience to the directions of the employer.

1 118. Plaintiff and the other class members incurred necessary business-related
2 expenses and costs that were not fully reimbursed by Defendants.

3 119. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
4 other class members for all necessary business-related expenses and costs.

5 120. Plaintiff and the other class members are entitled to recover from Defendants their
6 business-related expenses and costs incurred during the course and scope of their employment,
7 plus interest accrued from the date on which the employee incurred the necessary expenditures
8 at the same rate as judgments in civil actions in the State of California.

9 **TENTH CAUSE OF ACTION**

10 (Violation of California Labor Code § 221)

11 121. Plaintiff incorporates by reference the allegations contained in paragraphs 1
12 through 120, and each and every part thereof with the same force and effect as though fully set
13 forth herein.

14 122. Pursuant to California Labor Code section 221, it is unlawful for any employer to
15 collect or receive from an employee any part of wages theretofore paid by said employer to said
16 employee.

17 123. Defendants unlawfully deducted uniform expenses Plaintiff and Class Members'
18 wages. Defendants charged Plaintiff and Class Members for laundering of the uniform they
19 were required to wear. With respect to Plaintiff, Defendants deducted \$16.92 from Plaintiff's
20 pay from January 2020 to March 2021 for uniform expenses.

21 124. Plaintiff and the other class members are entitled to recover from Defendants the
22 amounts unlawfully deducted from their wages, plus interest accrued from the date on which the
23 wages were due and payable at the same rate as judgments in civil actions in the State of
24 California.

25 **ELEVENTH CAUSE OF ACTION**

26 (Violation of California Business & Professions Code §§ 17200, et seq.)

27 (Against BORRMANN METAL CENTER and DOES 1 through 100)

28 125. Plaintiff incorporates by reference the allegations contained in paragraphs 1

1 through 124, and each and every part thereof with the same force and effect as though fully set
2 forth herein.

3 126. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
4 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
5 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest
6 within the meaning of Code of Civil Procedure section 1021.5.

7 127. Defendants' activities as alleged herein are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business & Professions
9 Code section 17200, et seq.

10 128. A violation of California Business & Professions Code section 17200, et seq. may
11 be predicated on the violation of any state or federal law. In this instant case, Defendants'
12 policies and practices of requiring employees, including Plaintiff and the other class members,
13 to work overtime without paying them proper compensation violate California Labor Code
14 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,
15 including Plaintiff and the other class members, to work through their meal and rest periods
16 without paying them proper compensation violate California Labor Code sections 226.7 and
17 512(a). Defendants' policies and practices of failing to pay minimum wages violate California
18 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of
19 failing to timely pay wages to Plaintiff and the other class members violate California Labor
20 Code sections 201, 202 and 204. Defendants also violated California Labor Code sections
21 226(a), 1174(d), 2800 and 2802.

22 129. As a result of the herein described violations of California law, Defendants
23 unlawfully gained an unfair advantage over other businesses.

24 130. Plaintiff and the other class members have been personally injured by Defendants'
25 unlawful business acts and practices as alleged herein, including but not necessarily limited to
26 the loss of money and/or property.

27 131. Pursuant to California Business & Professions Code sections 17200, et seq.,
28 Plaintiff and the other class members are entitled to restitution of the wages withheld and retained

1 by Defendants during a period that commences four years preceding the filing of this First
2 Amended Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure
3 section 1021.5 and other applicable laws; and an award of costs.

4 **TWELFTH CAUSE OF ACTION**

5 **(Violation of The Private Attorneys General Act Cal. Lab. Code §§ 2698, et seq.)**

6 **(Against BORRMANN METAL CENTER and DOES 1 through 100)**

7 132. Plaintiff realleges and incorporates by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 133. PAGA is a mechanism by which the State of California itself can enforce state
10 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
11 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
12 fundamentally a law enforcement action designed to protect the public and not to benefit private
13 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
14 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA,
15 the California Legislature specified that "it was ... in the public interest to allow aggrieved
16 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
17 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

18 134. Plaintiff, and such persons that may be added from time to time who
19 satisfy the requirements and exhaust the administrative procedures under the Private Attorney
20 General Act, bring this Representative Action on behalf of the State of California with respect
21 to himself and all non-exempt employees who are or previously were employed by worked for
22 Defendant Borrmann Metal Center, Inc. and performed work in California between November 30,
23 2022 and February 29, 2024 (the "AGGRIEVED EMPLOYEES").

24 135. On February 7, 2024, Plaintiff gave an amended written notice by certified mail to
25 the Labor and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. **See**
27 **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting
28 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to

1 Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant
2 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
3 EMPLOYEES as herein defined.

4 136. The policies, acts and practices heretofore described were and are an
5 unlawful business act or practice because Defendants (a) failed to pay all and overtime wages
6 due; (b) failed to provide proper meal periods, and to properly provide premium pay in lieu
7 thereof; (c) failed to provide proper rest periods, and to properly provide premium pay in lieu
8 thereof; (d) failed to pay all minimum wages due; (e) failure to pay all wages timely during
9 employment; (f) failed to pay all wages timely at the time of termination; (g) failure to provide
10 complete, accurate or properly formatted wage statements; (h) failed to reimburse business
11 expenses; (i) engaged in unfair business practices that could have been premised on the claims,
12 causes of action or legal theories of relief described above or any of the claims, causes of action
13 or legal theories of relief pleaded in the operative complaint; (j) failed to keep requisite payroll
14 records, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
15 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221,
16 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
17 1197.14, 1198, 1198.5, 1199, 2800, 2802, and 2804, and the applicable Industrial Wage
18 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. Plaintiff
19 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
20 General Act of 2004 as the representative of the State of California for the illegal conduct
21 perpetrated on Plaintiff and the other AGGRIEVED EMPLOYEES

22 137. For all provisions of the Labor Code for which civil penalty is not specifically
23 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100)
24 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred
25 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
26 Plaintiff and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's
27 fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section
28 2699(g)(1).

138. To the extent that any of the conduct and violations alleged herein did not affect Plaintiff during the PAGA PERIOD, Plaintiff seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018)).

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing

1 from the date such amounts were due;

2 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
3 California Labor Code section 1194; and

4 9. For such other and further relief as the Court may deem just and proper.

5 **As to the Second Cause of Action**

6 10. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
8 provide all meal periods (including second meal periods) to Plaintiff and the other class
9 members;

10 11. That the Court make an award to Plaintiff and the other class members of one (1)
11 hour of pay at each employee's regular rate of compensation for each workday that a meal period
12 was not provided;

13 12. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 13. For premium wages pursuant to California Labor Code section 226.7(c);

16 14. For pre-judgment interest on any unpaid wages from the date such amounts were
17 due;

18 15. For reasonable attorneys' fees and costs of suit incurred herein; and

19 16. For such other and further relief as the Court may deem just and proper.

20 **As to the Third Cause of Action**

21 17. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
23 rest periods to Plaintiff and the other class members;

24 18. That the Court make an award to Plaintiff and the other class members of one (1)
25 hour of pay at each employee's regular rate of compensation for each workday that a rest period
26 was not provided;

27 19. For all actual, consequential, and incidental losses and damages, according to
28 proof;

- 1 20. For premium wages pursuant to California Labor Code section 226.7(c);
2 21. For pre-judgment interest on any unpaid wages from the date such amounts were
3 due; and
4 22. For such other and further relief as the Court may deem just and proper.

5 **As to the Fourth Cause of Action**

6 23. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
8 Plaintiff and the other class members;

9 24. For general unpaid wages and such general and special damages as may be
10 appropriate;

11 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
12 Plaintiff and the other class members in the amount as may be established according to proof at
13 trial;

14 26. For pre-judgment interest on any unpaid compensation from the date such
15 amounts were due;

16 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Labor Code section 1194(a);

18 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

19 29. For such other and further relief as the Court may deem just and proper.

20 **As to the Fifth Cause of Action**

21 30. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
23 time of termination of the employment of Plaintiff and the other class members no longer
24 employed by Defendants;

25 31. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 32. For statutory wage penalties pursuant to California Labor Code section 203 for
28 Plaintiff and the other class members who have left Defendants' employ;

1 33. For pre-judgment interest on any unpaid compensation from the date such
2 amounts were due; and

3 34. For such other and further relief as the Court may deem just and proper.

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

5 35. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code section 204 by willfully failing to pay all compensation owed at the time required
7 by California Labor Code section 204 to Plaintiff and the other class members;

8 36. For all actual, consequential, and incidental losses and damages, according to
9 proof;

10 37. For pre-judgment interest on any unpaid compensation from the date such
11 amounts were due; and

12 38. For such other and further relief as the Court may deem just and proper.

13 **As to the Seventh Cause of Action**

14 39. That the Court declare, adjudge and decree that Defendants violated the record
15 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
16 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
17 wage statements thereto;

18 40. For actual, consequential and incidental losses and damages, according to proof;

19 41. For statutory penalties pursuant to California Labor Code section 226(e);

20 42. For injunctive relief to ensure compliance with this section, pursuant to California
21 Labor Code section 226(h); and

22 43. For such other and further relief as the Court may deem just and proper.

23 **As to the Eighth Cause of Action**

24 44. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records
26 for Plaintiff and the other class members as required by California Labor Code section 1174(d);

27 45. For actual, consequential and incidental losses and damages, according to proof;

28 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

1 47. For such other and further relief as the Court may deem just and proper.

2 **As to the Ninth Cause of Action**

3 48. That the Court declare, adjudge and decree that Defendants violated California
4 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class
5 members for all necessary business-related expenses as required by California Labor Code
6 sections 2800 and 2802;

7 49. For actual, consequential and incidental losses and damages, according to proof;

8 50. For the imposition of civil penalties and/or statutory penalties;

9 51. For reasonable attorneys' fees and costs of suit incurred herein; and

10 52. For such other and further relief as the Court may deem just and proper.

11 **As to the Tenth Cause of Action**

12 53. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code section 221 by willfully deducting certain amounts from the wages due and payable
14 to Plaintiff and the Class Members;

15 54. For actual, consequential and incidental losses and damages, according to proof;

16 55. For the imposition of civil penalties and/or statutory penalties;

17 56. For reasonable attorneys' fees and costs of suit incurred herein; and

18 57. For such other and further relief as the Court may deem just and proper.

19 **As to the Eleventh Cause of Action**

20 58. That the Court decree, adjudge and decree that Defendants violated California
21 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
22 other class members all overtime compensation due to them, failing to provide all meal and rest
23 periods to Plaintiff and the other class members, failing to pay at least minimum wages to
24 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
25 wages timely as required by California Labor Code section 201, 202 and 204 and by violating
26 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

27 59. For restitution of unpaid wages to Plaintiff and all the other class members and
28 all pre-judgment interest from the day such amounts were due and payable;

1 60. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendants and determined to have been wrongfully acquired by
3 Defendants as a result of violation of California Business and Professions Code sections 17200,
4 et seq.;

5 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure section 1021.5;

7 62. For injunctive relief to ensure compliance with this section, pursuant to California
8 Business and Professions Code sections 17200, et seq.; and

9 63. For such other and further relief as the Court may deem just and proper.

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11 **As to the Twelfth Cause of Action**

12 59. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
13 Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004.

14
15 Dated: March 20, 2024

JCL LAW FIRM, APC
ZAKAY LAW GROUP, APLC

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17
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