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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED

RAUL BARRAGAN, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

HILMAR CHEESE COMPANY, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 24CV-06452

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Raul Barragan, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff’s claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Hilmar, County of Merced, in accordance with California Corporations Code
7 section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because
8 Defendants employ persons in this county, and employed Plaintiff in this county, and thus a
9 substantial portion of the transactions and occurrences related to this action occurred in this
10 county.

11 **THE PARTIES**

12 4. Plaintiff Raul Barragan is a resident of Merced, in Merced County, California.
13 Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately
14 February 2022 to July 2024. Plaintiff worked for Defendants as a Maintenance Technician.
15 During his employment, Plaintiff typically worked twelve (12) hours per day and two (2) to
16 five (5) days per week. Plaintiff’s primary job duties included, without limitation, repairing
17 machinery to ensure smooth operation of the plant.

18 5. HILMAR CHEESE COMPANY, INC. was and is, upon information and belief,
19 a California corporation, and at all times hereinafter mentioned, an employer whose
20 employees are engaged throughout this county and the State of California.

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

25 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
26 were the partners, agents, owners, or managers of HILMAR CHEESE COMPANY, INC. at all
27 relevant times.

28 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to HILMAR CHEESE
2 COMPANY, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “HILMAR
3 CHEESE”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
4 in concert with, each of the other co-Defendants and was acting within the course and scope of
5 such agency, employment, joint venture, or concerted activity with legal authority to act on
6 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
7 the official policy of Defendants.

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

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

15 **GENERAL ALLEGATIONS**

16 11. Defendants manufacture cheese and whey protein and deliver their products to
17 customers worldwide. Upon information and belief, Defendants maintain a single, centralized
18 Human Resources (“HR”) department at their company headquarters in Hilmar, California,
19 which is responsible for the recruiting and hiring of new employees, and communicating and
20 implementing Defendants’ company-wide policies, including timekeeping policies and meal
21 and rest period policies, to employees throughout California.

22 12. In particular, Plaintiff and class members, on information and belief, received
23 the same standardized documents and/or written policies. Upon information and belief, the
24 usage of standardized documents and/or written policies, including new-hire documents,
25 indicate that Defendants dictated policies at the corporate level and implemented them
26 company-wide, regardless of their employees’ assigned locations or positions. Upon
27 information and belief, Defendants set forth uniform policies and procedures in several
28 documents provided at an employee’s time of hire.

1 13. Upon information and belief, Defendants maintain a centralized Payroll
2 department at their company headquarters in Hilmar, California, which processes payroll for
3 all non-exempt, hourly paid employees working for Defendants at their various locations in
4 California, including Plaintiff and class members. Based upon information and belief,
5 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
6 employees in California, irrespective of their work locations. Upon information and belief,
7 Defendants process payroll for departing employees in the same manner throughout the State
8 of California, regardless of the manner in which each employee's employment ends.

9 14. Defendants continue to employ non-exempt or hourly paid employees in
10 California.

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

15 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
16 members were not paid for all hours worked because all hours worked were not recorded.

17 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive certain wages for
19 overtime compensation and that they were not receiving certain wages for overtime
20 compensation.

21 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to be paid at a regular rate
23 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
24 premiums, that included as eligible income all remuneration required by law, including but not
25 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
26 forms of compensation, but failed to include all forms of remuneration in calculating the
27 regular rate of pay for Plaintiff and class members.

28 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive at least minimum
2 wages for compensation and that they were not receiving at least minimum wages for work
3 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
4 and class members were not paid at least minimum wages for work done off-the-clock.

5 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to meal periods in
7 accordance with the California Labor Code and applicable IWC Wage Order or payment of
8 one (1) additional hour of pay at their regular rates of pay when they were not provided with
9 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
10 were not provided with all meal periods or payment of one (1) additional hour of pay at their
11 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
12 period.

13 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to rest periods in
15 accordance with the California Labor Code and applicable IWC Wage Order or payment of
16 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
17 permitted to take a compliant rest period and that Plaintiff and class members were not
18 authorized and permitted to take compliant rest periods or provided with payment of one (1)
19 additional hour of pay at their regular rates of pay when they were not authorized and
20 permitted to take a compliant rest period.

21 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive complete and
23 accurate wage statements in accordance with California law. In violation of the California
24 Labor Code, Plaintiff and class members were not provided complete and accurate wage
25 statements.

26 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that they had a duty to maintain accurate and complete payroll records in
28 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,

1 knowingly, and intentionally failed to do so.

2 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to timely payment of all
4 wages earned upon termination of employment. In violation of the California Labor Code,
5 Plaintiff and class members did not receive payment of all wages due, including, but not
6 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
7 permissible time periods.

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

13 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive full
15 reimbursement for all business-related expenses and costs they incurred during the course and
16 scope of their employment and that they did not receive full reimbursement of applicable
17 business-related expenses and costs incurred.

18 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to compensate
20 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
21 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
22 falsely represented to Plaintiff and class members that they were properly denied wages, all in
23 order to increase Defendants' profits.

24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 28. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
28 violations of the California Labor Code and applicable IWC Wage Order may, as an

1 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
2 themselves and other current or former employees pursuant to procedures outlined in
3 California Labor Code section 2699.3.

4 29. PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as
5 “any person who was employed by the alleged violator and personally suffered each of the
6 violations alleged.”

7 30. Plaintiff and other current and former employees of Defendants are “aggrieved
8 employees” as defined by Labor Code section 2699(c)(1) in that they are all Defendants’
9 current or former employees and each of the alleged violations were committed against them.

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

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated, including the facts and theories to support the alleged
17 violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(a) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The LWDA shall notify the employer and the aggrieved employee or
22 representative by certified mail that it does not intend to investigate the
23 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
24 the postmark date of the aggrieved employee’s notice. Upon receipt of
25 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
26 (65) calendar days of the postmark date of the aggrieved employee’s
27 notice, the aggrieved employee may commence a civil action pursuant
28 to California Labor Code section 2699 to recover civil penalties.

1 32. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
2 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
3 provision other than those listed in Section 2699.5 after the following requirements have been
4 met:

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

22 33. On December 17, 2024, Plaintiff provided written notice by online filing to the
23 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
24 Code alleged to have been violated, including facts and theories to support the alleged
25 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
26 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
27 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
28 Plaintiff PAGA Case Number LWDA-CM-1067956-24. A true and correct copy of Plaintiff's

1 written notice to the LWDA and Defendants is attached hereto as “Exhibit 1.”

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

5 35. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
8 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

9 36. Labor Code section 558(a) provides “[a]ny employer or other person acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial Welfare
12 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
15 underpaid employee for each pay period for which the employee was underpaid” Labor
16 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
17 to any other civil or criminal penalty provided by law.”

18 37. Defendants, at all times relevant to this complaint, were employers or persons
19 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
20 rights by violating various sections of the California Labor Code as set forth above.

21 38. As set forth below, Defendants have violated numerous provisions of both the
22 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
23 Order.

24 39. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5.
25 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public
26 interest as a private attorney general, seeks assessment and collection of civil penalties and
27 injunctive relief for himself, all other aggrieved employees, and the State of California against
28 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, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

41. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

42. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, at any time from August 11, 2023, until the date of trial ("Class").

43. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

44. Members of the Class and Subclass are referred to herein as "class members."

45. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

46. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members

- (c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (d) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members during their employment;
- (j) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

47. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all

1 members would be unfeasible and impractical. The membership of the
2 entire class is unknown to Plaintiff at this time; however, the class is
3 estimated to be greater than one hundred (100) individuals and the
4 identity of such membership is readily ascertainable by inspection of
5 Defendants' employment records.

6 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
7 protect the interests of each class member with whom he has a well-
8 defined community of interest, and Plaintiff's claims (or defenses, if
9 any) are typical of all class members as demonstrated herein.

10 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
11 protect the interests of each class member with whom he has a well-
12 defined community of interest and typicality of claims, as demonstrated
13 herein. Plaintiff acknowledges that he has an obligation to make known
14 to the Court any relationship, conflicts or differences with any class
15 member. Plaintiff's attorneys, the proposed class counsel, are versed in
16 the rules governing class action discovery, certification, and settlement.
17 Plaintiff has incurred, and throughout the duration of this action, will
18 continue to incur costs and attorneys' fees that have been, are, and will
19 be necessarily expended for the prosecution of this action for the
20 substantial benefit of each class member.

21 (d) Superiority: The nature of this action makes the use of class action
22 adjudication superior to other methods. A class action will achieve
23 economies of time, effort, and expense as compared with separate
24 lawsuits, and will avoid inconsistent outcomes because the same issues
25 can be adjudicated in the same manner and at the same time for the
26 entire class.

27 (e) Public Policy Considerations: Employers in the State of California
28 violate employment and labor laws every day. Current employees are

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often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION
Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime
(Against all Defendants)

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

49. 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.”

50. 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.

51. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members 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.

52. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day,

1 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
2 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
3 employee, including nondiscretionary bonuses and incentive pay.

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

10 54. During the relevant time period, Defendants willfully failed to pay all overtime
11 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
12 class members were not paid overtime premiums for all of the hours they worked in excess of
13 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
14 hours in a week, because all hours worked were not recorded.

15 55. Defendants had, and continue to have, a company-wide policy and/or practice
16 of requiring Plaintiff and class members to perform work off-the-clock before their scheduled
17 shifts. For example, Plaintiff and class members were required to change into uniforms and
18 don their personal protective equipment ("PPE"), such as steel-toed boots, hard hats, safety
19 glasses, and ear plugs at Defendants' facility; however, Defendants did not allow Plaintiff and
20 class members to report the time spent donning their uniforms and PPE at the beginning of
21 their shifts, which took approximately 15 minutes, despite being on Defendants' premises and
22 under Defendants' control. As a result, Plaintiff and class members were required to spend
23 time donning uniforms and PPE before clocking in for their shifts. As another example,
24 Defendants did not provide Plaintiff and class members with a sufficient number of
25 timekeeping machines to clock in for their shifts, thus forcing Plaintiff and class members to
26 wait in line off-the-clock and under Defendants' control, time for which they were not paid.
27 Plaintiff and class members would arrive early in order to clock in for the start of their shifts,
28 and were required to wait in a line up to a minute to clock in, time for which they were not

1 paid. Thus, Defendants failed to track all hours Plaintiff and class members spent working
2 before clocking in, and Plaintiff and class members received no compensation for this time.

3 56. Defendants knew or should have known that as a result of these company-wide
4 practices and/or policies, Plaintiff and class members were performing their assigned duties
5 off-the-clock before their shifts, and were suffered or permitted to perform work for which
6 they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours or
7 more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for
8 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages
9 for all of the overtime hours they actually worked.

10 57. Moreover, Defendants did not pay Plaintiff and class members the correct
11 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
12 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
13 and/or other forms of remuneration. However, in violation of the California Labor Code,
14 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
15 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
16 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
17 class members worked overtime and received these other forms of pay, Defendants failed to
18 pay all overtime wages by paying a lower overtime rate than required.

19 58. For example, Defendants paid Plaintiff and class members incentive pay and/or
20 nondiscretionary bonuses which were listed on Plaintiff's and class members' wage
21 statements as "Bonus Hourly." During pay periods that Plaintiff and class members were paid
22 overtime wages, Defendants did not incorporate the incentive pay and/or nondiscretionary
23 bonuses into Plaintiff's and class members' regular rate of pay and, as a result, paid them at
24 incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid
25 Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular
26 rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all
27 remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and class
28 members on a company-wide basis.

1 59. Defendants' failure to pay Plaintiff and class members the balance of overtime
2 compensation as required by California law, violates the provisions of California Labor Code
3 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
4 members are entitled to recover from Defendants their unpaid overtime compensation, as well
5 as interest, costs, and attorneys' fees.

6 **SECOND CAUSE OF ACTION**

7 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid**
8 **Minimum Wages**
9 **(Against all Defendants)**

10 60. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
11 and every allegation set forth above.

12 61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
13 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
14 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
15 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the
16 time during which an employee is subject to the control of an employer, and includes all the
17 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
18 Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

19 62. As set forth above, Defendants maintained policies and/or practices requiring
20 Plaintiff and class members to perform work off-the-clock prior to the start of their shifts,
21 including waiting to clock in and donning uniforms and PPE. Defendants failed to track all of
22 this time Plaintiff and class members spent working off-the-clock, and thus, Plaintiff and class
23 members received no compensation for this time.

24 63. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
25 and class members. To the extent that these off-the-clock hours did not qualify for overtime
26 premium payment, Defendants did not pay at least minimum wages for those hours worked
27 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
28 1198.

**Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period
Violations
(Against all Defendants)**

66. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

68. At all relevant times herein set forth, 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.

69. Under California law, an employer cannot evade meal period requirements via the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L’Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

70. During the relevant time period, on information and belief, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their facilities while assigning heavy workloads, resulting in a failure to provide Plaintiff and class members with adequate meal period coverage. Because Defendants did not employ or staff a sufficient number of employees to meet the plant’s production demand, there was no one available to relieve employees needing meal period coverage, and Plaintiff and class members were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, Defendants, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Plaintiff and class members to not be relieved of their duties for compliant meal periods.

71. As a result, Plaintiff and class members have 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, Plaintiff took his meal periods late, after having worked in excess of five (5) hours into his shift, due to lack of coverage and heavy workload.

72. Moreover, Defendants did not provide Plaintiff and class members with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Plaintiff and class members did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. To the extent Defendants required Plaintiff and class members to sign

1 written “on-duty” meal period agreements, such agreements are invalid as the nature of the
2 work performed by Plaintiff and class members and do not necessitate an “on-duty” meal
3 period under California law.

4 73. Moreover, Defendants had a company-wide policy of requiring all newly hired
5 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
6 the position that non-exempt, hourly paid employees had waived their rights to first and/or
7 second meal periods for the entirety of their employment and, on that basis, did not provide
8 them with all meal periods to which they were entitled. Furthermore, Defendants’ “Meal
9 Period Waiver – Shift Not More than Six Hours” requires employees to provide one day’s
10 advanced written notice should they wish to revoke the waiver. Defendants’ presumption that
11 meal periods would not be provided for shifts in excess of five (5) hours but less than six (6)
12 hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to
13 blanket meal period waivers signed at or near the time of hire, and imposition on employees to
14 revoke the waivers in advance in writing, discouraged and impeded Plaintiff and class
15 members from taking all meal periods to which they were entitled.

16 74. Furthermore, an employer’s obligation to provide a meal period is only
17 “triggered” when the employer “employs an employee for a work period of more than five
18 hours per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits
19 anyone to work for a full five hours, its meal break obligation is triggered.”).

20 [A]fter the meal break obligation is triggered . . . an employer is put to
21 a choice: it must (1) afford an off-duty meal period; (2) consent to a
22 mutually agreed-upon waiver if one hour or less will end the shift; or
23 (3) obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

24 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
25 require Plaintiff and class members to sign meal period waivers simultaneously at or near their
26 time of hire (as opposed to on a specific work day) renders them invalid and unenforceable,
27 because Defendants’ obligation to provide Plaintiff and class members with meal periods did
28 not arise until they had employed them for a full five (5) hours.

75. At all times herein mentioned, Defendants knew or should have known that, as a result of these policies, Plaintiff and class members were prevented from being relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that Defendants did not pay Plaintiff and class members all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

76. Moreover, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums because Defendants systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. For example, as stated, Defendants paid Plaintiff and class members incentive pay and/or nondiscretionary bonuses which were listed on Plaintiff's and class members' wage statements as "Bonus Hourly." During pay periods that Plaintiff and class members were paid premium pay for missed, late, and interrupted meal periods, Defendants did not incorporate the incentive pay and/or nondiscretionary bonuses into Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay meal premiums. Specifically, Defendants paid Plaintiff and class members meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

77. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

1 **FOURTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
3 **(Against all Defendants)**

4 78. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 79. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
8 members' employment by Defendants.

9 80. At all relevant times, the applicable IWC Wage Order provides that "[e]very
10 employer shall authorize and permit all employees to take rest periods, which insofar as
11 practicable shall be in the middle of each work period" and that the "rest period time shall be
12 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
13 hours or major fraction thereof" unless the total daily work time is less than three and one-half
14 (3 ½) hours.

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

23 82. Pursuant to the applicable IWC Wage Order and California Labor Code section
24 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
25 additional hour of pay at their regular rates of pay for each work day that a required rest
26 period was not authorized and permitted.

27 83. During the relevant time period, Defendants regularly failed to authorize and
28 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour

1 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
2 policies and/or practices of understaffing and assigning heavy workloads resulted in a lack of
3 rest period coverage and prevented Plaintiff and class members from being relieved of all duty
4 in order to take compliant rest periods. Defendants also failed to schedule rest periods, which,
5 coupled with Defendants' failure to provide adequate rest period coverage, further led to
6 Plaintiff and class members not being authorized and permitted to take rest periods.

7 84. Furthermore, Defendants maintained and implemented a company-wide on-
8 premises rest period policy, which mandated that Plaintiff and class members remain on the
9 premises during their rest periods. Because Plaintiff and class members were restricted from
10 leaving Defendants' premises during rest periods, they were denied the ability to use their rest
11 periods freely for their own purposes, such as running personal errands. Thus, Defendants
12 effectively maintained control over Plaintiff and class members during rest periods.

13 85. As a result of Defendants' practices and policies, Plaintiff and class members
14 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
15 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
16 to forgo majority of his rest periods due to the lack of coverage, heavy workload, and
17 Defendants' failure to schedule rest periods for employees.

18 86. Defendants have also engaged in a company-wide practice and/or policy of not
19 paying rest period premiums owed when compliant rest periods are not authorized and
20 permitted. Because of this practice and/or policy, Plaintiff and class members have not
21 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
22 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
23 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
24 premium wages because Defendants failed to include all forms of compensation, such as
25 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular
26 rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed
27 to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and
28 the applicable IWC Wage Order.

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

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

91. Because Defendants did not record the time Plaintiff and Subclass members spent working off the clock, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours

1 worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list
2 the applicable hourly rates of pay in effect during the pay period and the corresponding
3 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

4 92. Moreover, because Defendants did not calculate Plaintiff's and Subclass
5 members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
6 rest period premiums, Defendants did not list the correct amount of gross wages in compliance
7 with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of
8 net wages in violation of section 226(a)(5). Defendants also failed to correctly list all
9 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
10 overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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

19 94. California Labor Code section 1174(d) provides that "[e]very person employing
20 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
21 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
22 plants or establishments at which employees are employed, payroll records showing the hours
23 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
24 applicable piece rate paid to, employees employed at the respective plants or
25 establishments" At all relevant times, and in violation of Labor Code section 1174(d),
26 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
27 members showing the daily hours they worked and the wages paid thereto as a result of failing
28 to record the off-the-clock hours that they worked.

14 96. Plaintiff and Subclass members are entitled to recover from Defendants the
15 greater of their actual damages caused by Defendants' failure to comply with California Labor
16 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
17 employee.

18 **SIXTH CAUSE OF ACTION**
19 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**
20 **Termination**
21 **(Against all Defendants)**

22 97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

98. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

27 99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
28 that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
2 her employment, his or her wages shall become due and payable not later than seventy-two
3 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting.

6 100. Defendants willfully failed to pay Plaintiff and class members who are no
7 longer employed by Defendants the earned and unpaid wages set forth above, including but
8 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either
9 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
10 employ.

11 101. Defendants' failure to pay Plaintiff and class members who are no longer
12 employed by Defendants their wages earned and unpaid at the time of discharge, or within
13 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
14 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
15 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
16 thirty (30) day maximum pursuant to California Labor Code section 203.

17 **SEVENTH CAUSE OF ACTION**

18 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
19 **Employment**
20 **(Against all Defendants)**

21 102. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 103. This cause of action is dependent upon, and wholly derivative of, the overtime
24 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
25 Plaintiff and class members during their employment.

26 104. At all times relevant herein set forth, Labor Code section 204 provides that all
27 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
28 days, inclusive, of any calendar month, other than those wages due upon termination of an

1 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
2 the month during which the labor was performed.

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

8 106. At all times relevant herein, Labor Code section 204 provides that all wages
9 earned for labor in excess of the normal work period shall be paid no later than the payday for
10 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
11 204 provides that the requirements of this section are deemed satisfied by the payment of
12 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
13 seven (7) calendar days following the close of the payroll period.

14 107. During the relevant time period, Defendants willfully failed to pay Plaintiff and
15 class members all wages due including, but not limited to, overtime wages, minimum wages,
16 and/or meal and rest period premiums, within the time periods specified by California Labor
17 Code section 204.

18 108. Defendants' failure to pay Plaintiff and class members all wages due violates
19 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
20 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

21 **EIGHTH CAUSE OF ACTION**

22 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
23 **(Against all Defendants)**

24 109. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 110. At all times herein set forth, California Labor Code section 2802 provides that
27 an employer must reimburse employees for all necessary expenditures and losses incurred by
28 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is

1 to prevent employers from passing off their cost of doing business and operating expenses on
2 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
3 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen
4 tools or equipment are required by the employer or are necessary to the performance of a job,
5 such tools and equipment shall be provided and maintained by the employer, except that an
6 employee whose wages are at least two (2) times the minimum wage provided herein may be
7 required to provide and maintain hand tools and equipment customarily required by the trade
8 or craft."

9 111. During the relevant time period, Plaintiff and class members were required to
10 use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile
11 data to carry out their job duties, but Defendants failed to reimburse them for the costs of their
12 work-related mobile device and/or mobile data expenses. For example, Plaintiff would use his
13 personal cellular phone to take photos of broken machinery and send them to his supervisor to
14 alert the supervisor regarding the parts that needed to be ordered for repairs. As a further
15 example, Plaintiff used his personal cellular phone to communicate with Defendants'
16 management regarding work-related issues and procedures. Although Defendants required
17 Plaintiff and class members to utilize their personal mobile devices and/or mobile data to
18 carry out their work-related responsibilities, Defendants failed to reimburse them for these
19 costs.

20 112. Defendants could have provided Plaintiff and class members with the actual
21 equipment for use on the job, such as company mobile devices. Or, Defendants could have
22 reimbursed employees for their mobile device usage. Instead, Defendants passed these
23 operating costs onto Plaintiff and class members.

24 113. Defendants' company-wide policy and/or practice of not reimbursing
25 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
26 and class members violates California Labor Code section 2802. Defendants have
27 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
28 business-related expenses and costs.

1 114. Pursuant to California Labor Code section 2802, Plaintiff and class members
2 are entitled to recover from Defendants their business-related expenses incurred during the
3 course and scope of their employment, plus interest, costs, and attorneys' fees.

4 **NINTH CAUSE OF ACTION**

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

6 **(Against all Defendants)**

7 115. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 116. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
10 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
11 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and
12 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
13 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
14 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, and 2802.

15 117. Defendants' conduct, as alleged herein, violates numerous sections of the
16 California Labor Code, including, but not limited to, the following:

- 17 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
18 Wage Order for Defendants' failure to compensate Plaintiff and other
19 aggrieved employees with all required overtime pay, as alleged herein;
- 20 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
21 applicable IWC Wage Order for Defendants' failure to include all forms
22 of remuneration in the regular rate of pay as required by law for
23 purposes of paying overtime wages and/or meal and rest period
24 premiums to Plaintiff and other aggrieved employees, as alleged herein;
- 25 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
26 1198, and the applicable IWC Wage Order for Defendants' failure to
27 compensate Plaintiff and other aggrieved employees with at least
28 minimum wages for all hours worked, as alleged herein;

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- (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein; and
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

118. Therefore, Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

TENTH CAUSE OF ACTION
Violation of California Business & Professions Code §§ 17200, et seq. –
Unlawful Business Practices
(Against all Defendants)

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

1 120. Defendants are “persons” as defined by California Business & Professions
2 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
3 and/or associations.

4 121. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
5 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
6 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
7 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
8 meaning of Code of Civil Procedure section 1021.5.

9 122. Defendants’ activities, as alleged herein, are violations of California law, and
10 constitute unlawful business acts and practices in violation of California Business &
11 Professions Code sections 17200, *et seq.*

12 123. A violation of California Business & Professions Code sections 17200, *et seq.*
13 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
14 policies and practices have violated state law in at least the following respects:

- 15 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
16 class members, to work overtime without paying them proper
17 compensation in violation of California Labor Code sections 510 and
18 1198, and the applicable IWC Wage Order, as alleged herein;
- 19 (b) Failing to include all forms of remuneration in the regular rate of pay as
20 required by law for purposes of paying overtime wages and/or meal and
21 rest period premiums to Plaintiff and class members, in violation of
22 California Labor Code sections 226.7, 510, and 1198, and the applicable
23 IWC Wage Order, as alleged herein;
- 24 (c) Failing to pay at least minimum wage to Plaintiff and class members in
25 violation of California Labor Code sections 1182.12, 1194, 1197,
26 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
27 herein;
- 28 (d) Failing to provide all meal periods to Plaintiff and class members in

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- violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to authorize and permit Plaintiff and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
 - (f) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
 - (g) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein; and
 - (h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

124. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants’ unlawful business acts and practices alleged herein.

125. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of the initial complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

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ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

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

127. Defendants are “persons” as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

128. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

129. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

130. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest period laws and constitute

1 acts against the public policy behind these laws.

2 131. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
4 benefits implemented by section 226.7 withheld and retained by Defendants during a period
5 that commences four years prior to the filing of the initial complaint; a permanent injunction
6 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
7 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
8 Procedure section 1021.5 and other applicable laws; and an award of costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
13 against Defendants, jointly and severally, as follows:

14 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
15 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
16 reserves the right to amend his prayer for relief to seek a different amount.

17 **Class Certification**

- 18 2. That this case be certified as a class action;
19 3. That Plaintiff be appointed as the representative of the Class and Subclass;
20 4. That counsel for Plaintiff be appointed as class counsel.

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

22 5. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
24 pay all overtime wages due to Plaintiff and class members;

25 6. For general unpaid wages at overtime wage rates and such general and special
26 damages as may be appropriate;

27 7. For pre-judgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due, or as otherwise provided by law;

1 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a); and

3 9. For such other and further relief as the Court may deem equitable and
4 appropriate.

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 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
8 Order by willfully failing to pay minimum wages to Plaintiff and class members;

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

11 12. For pre-judgment interest on any unpaid compensation from the date such
12 amounts were due, or as otherwise provided by law;

13 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a);

15 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

16 15. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

19 16. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
21 willfully failing to provide all meal periods to Plaintiff and class members;

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

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

27 19. For premiums pursuant to California Labor Code section 226.7(c);

28 20. For pre-judgment interest on any unpaid meal period premiums from the date

such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

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

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

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

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

- 1 32. For injunctive relief pursuant to California Labor Code section 226(h);
2 33. For statutory penalties pursuant to California Labor Code section 226(e);
3 34. For attorneys' fees and costs pursuant to California Labor Code section
4 226(e)(1); and
5 35. For such other and further relief as the Court may deem equitable and
6 appropriate.

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

- 8 36. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
10 and/or meal and rest period premiums owed at the time of termination of the employment of
11 Plaintiff and other terminated class members;
12 37. For all actual, consequential and incidental losses and damages, according to
13 proof;
14 38. For waiting time penalties according to proof pursuant to California Labor
15 Code section 203 for all employees who have left Defendants' employ;
16 39. For pre-judgment interest on any unpaid wages from the date such amounts
17 were due, or as otherwise provided by law;
18 40. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and
20 41. For such other and further relief as the Court may deem equitable and
21 appropriate.

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

- 23 42. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
25 overtime wages, minimum wages, and/or meal and rest period premiums during their
26 employment;
27 43. For all actual, consequential and incidental losses and damages, according to
28 proof;

3 45. For pre-judgment interest on any unpaid wages from the date such amounts
4 were due, or as otherwise provided by law;

5 46. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

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

10 48. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
12 related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as
may be appropriate;

15 50. For pre-judgment interest on any unpaid business-related expenses from the
16 date such amounts were due pursuant to California Labor Code section 2802(b), or as
17 otherwise provided by law;

18 51. For all actual, consequential and incidental losses and damages, according to
19 proof;

52. For attorneys' fees pursuant to California Labor Code section 2802(c) or as
otherwise provided by law; and

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

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime

wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); and 2802 (by failing to reimburse business expenses);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), 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;

56. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements 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;

57. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' 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;

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

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

As to the Tenth Cause of Action

60. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members

1 all meal periods, failing to authorize and permit Plaintiff and class members to take all rest
2 periods, failing to provide Plaintiff and class members accurate and complete wage
3 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
4 to timely pay Plaintiff and class members all earned wages during employment, and failing to
5 reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful
6 business practice in violation of California Business and Professions Code sections 17200, *et*
7 *seq.*;

8 61. For restitution of unpaid wages to Plaintiff and all class members and
9 prejudgment interest from the day such amounts were due and payable;

10 62. For the appointment of a receiver to receive, manage, and distribute any and all
11 funds disgorged from Defendants and determined to have been wrongfully acquired by
12 Defendants as a result of violations of California Business & Professions Code sections
13 17200, *et seq.*;

14 63. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
15 California Code of Civil Procedure section 1021.5; and

16 64. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

19 65. That the Court declare, adjudge and decree that Defendants' conduct of denying
20 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
21 an unfair business practice in violation of California Business and Professions Code sections
22 17200, *et seq.*;

23 66. For restitution of the statutory benefits under section 226.7 unfairly withheld
24 from Plaintiff and class members and prejudgment interest from the day such amounts were
25 due and payable;

26 67. For the appointment of a receiver to receive, manage, and distribute any and all
27 funds disgorged from Defendants and determined to have been wrongfully acquired by
28 Defendants as a result of violations of California Business & Professions Code sections

1 17200, *et seq.*;

2 68. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
3 California Code of Civil Procedure section 1021.5;

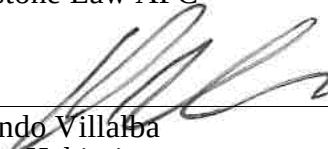
4 69. For pre-judgment and post-judgment interest as provided by law; and

5 70. For such other and further relief as the Court may deem equitable and
6 appropriate.

7
8 Dated: February 21, 2025

Respectfully submitted,

9 Capstone Law APC

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11 By: 

Orlando Villalba

Helga Hakimi

Jaime Castaneda

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13 Attorneys for Plaintiff Raul Barragan
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EXHIBIT “1”



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December 17, 2024

VIA ONLINE SUBMISSION

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

Subject: *Raul Barragan v. Hilmar Cheese Company, Inc.*

Dear PAGA Administrator:

This office represents Raul Barragan in connection with his claims under the California Labor Code. Mr. Barragan was an employee of HILMAR CHEESE COMPANY, INC. ("HCC").

The employer may be contacted directly at the addresses below:

HILMAR CHEESE COMPANY, INC.
8901 N LANDER AVE
HILMAR, CA 95324

HILMAR CHEESE COMPANY, INC.
PO BOX 910
HILMAR, CA 95324

Mr. Barragan 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. Barragan seeks relief on behalf of himself, the State of California, and other persons who are or were employed by HCC 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.

HCC employed Mr. Barragan as an hourly paid, non-exempt employee from approximately February 2022 to July 2024. Mr. Barragan worked for HCC as a Maintenance Technician at its manufacturing plant in Hilmar, California. During his employment, Mr. Barragan typically worked twelve (12) hours per day and two (2) or more days per week. By the end of his employment, Mr. Barragan was compensated approximately \$36.11 per hour. His job duties included, without limitation, repairing machinery to ensure smooth operation of the plant.

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

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

HCC is a California corporation that manufactures cheese and whey protein and delivers its products to customers worldwide. Upon information and belief, HCC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Hilmar, California, for all non-exempt, hourly paid employees working for HCC in California, including Mr. Barragan and other aggrieved employees. At all relevant times, HCC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Barragan and other aggrieved employees, regardless of their location or position.

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

HCC willfully failed to pay all overtime wages owed to Mr. Barragan and other aggrieved employees. During the relevant time period, Mr. Barragan 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 that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Barragan’s experience and counsel’s review of those records currently available relating to Mr. Barragan’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. Barragan 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.

HCC had, and continues to have, a company-wide policy and/or practice of requiring Mr. Barragan and other aggrieved employees to perform work off-the-clock before their scheduled shifts. For example, Mr. Barragan and other aggrieved employees were required to change into uniforms and don their personal protective equipment (“PPE”), such as steel-toed boots, hard hats, safety glasses, and ear plugs at HCC’s facility; however, HCC did not allow Mr. Barragan and other aggrieved employees to report the time spent donning their uniforms and PPE at the beginning of their shifts, which took approximately 15 minutes, despite being on HCC’s premises and under HCC’s control. As a result, Mr. Barragan and other aggrieved employees were required to spend time donning uniforms and PPE before clocking in for their shifts. As another example, HCC did not provide Mr. Barragan and other aggrieved employees with a sufficient number of timekeeping machines to clock in for their shifts, thus forcing Mr. Barragan and other aggrieved employees to wait in line off-the-clock and under HCC’s control, time for which they were not paid. Mr. Barragan and other aggrieved employees would arrive early in order to clock in for the start of their shifts, and were required to wait in a line up to a minute to clock in, time for which they were not paid. Thus, HCC failed to track all hours Mr. Barragan and other aggrieved employees spent working before clocking in, and Mr. Barragan and other aggrieved employees received no compensation for this time.

HCC knew or should have known that as a result of these company-wide practices and/or policies, Mr. Barragan and other aggrieved employees were performing their assigned duties off-the-clock before their shifts, and were suffered or permitted to perform work for which they were not paid. Because Mr. Barragan 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. Barragan and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, HCC did not pay Mr. Barragan and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, HCC paid Mr. Barragan and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, HCC failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Barragan and other aggrieved employees worked overtime and received these other forms of pay, HCC failed to pay all overtime wages by paying a lower overtime rate than required.

For example, HCC paid Mr. Barragan and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Barragan’s and other aggrieved employees’ wage statements as “Bonus Hourly.” During pay periods that Mr. Barragan and other aggrieved employees were paid overtime wages, HCC did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Barragan’s and other aggrieved employees’ regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, HCC paid Mr. Barragan and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. HCC’s failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Barragan and other aggrieved employees on a company-wide basis.

HCC’s failure to pay Mr. Barragan 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. Barragan and other aggrieved employees are entitled to recover civil

penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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").

As set forth above, HCC maintained policies and/or practices requiring Mr. Barragan and other aggrieved employees to perform work off-the-clock prior to the start of their shifts, including waiting to clock in and donning uniforms and PPE. HCC failed to track all of this time Mr. Barragan and other aggrieved employees spent working off-the-clock, and thus, Mr. Barragan and other aggrieved employees received no compensation for this time.

Thus, HCC did not pay minimum wages for all hours worked by Mr. Barragan and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, HCC 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, HCC regularly failed to pay at least minimum wages to Mr. Barragan 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. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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.

Under California law, an employer cannot evade meal period requirements via the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L’Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

During the relevant time period, on information and belief, HCC 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. Barragan and other aggrieved employees with adequate meal period coverage. Because HCC did not employ or staff a sufficient number of employees to meet the plant’s production demand, there was no one available to relieve employees needing meal period coverage, and Mr. Barragan and other aggrieved employees were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, HCC, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Barragan and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Barragan and other aggrieved employees have 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, Mr. Barragan took his meal periods late, after having worked in excess of five (5) hours into his shift, due to lack of coverage and heavy workload.

Moreover, HCC did not provide Mr. Barragan and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Barragan worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Barragan 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. To the extent HCC required Mr. Barragan and other aggrieved employees to sign written “on-duty” meal period agreements, such agreements are invalid as the nature of the work performed by Mr. Barragan and other aggrieved employees and do not necessitate an “on-duty” meal period under California law.

Moreover, HCC had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. HCC took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, HCC’s “Meal Period Waiver – Shift Not More than Six Hours” requires employees to provide one day’s advanced written notice should they wish to revoke the waiver. HCC’s presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in advance in writing, discouraged and impeded Mr. Barragan and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That HCC require Mr. Barragan and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because HCC's obligation to provide Mr. Barragan and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, HCC knew or should have known that, as a result of these policies, Mr. Barragan and other aggrieved employees were prevented from being relieved of all duties to take timely, uninterrupted meal periods. HCC further knew or should have known that HCC did not pay Mr. Barragan and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HCC engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Barragan and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that HCC did pay Mr. Barragan and other aggrieved employees premium pay for missed, late, and interrupted meal periods, HCC did not pay Mr. Barragan and other aggrieved employees at the correct rate of pay for premiums because HCC systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. For example, as stated, HCC paid Mr. Barragan and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Barragan's and other aggrieved employees' wage statements as "Bonus Hourly." During pay periods that Mr. Barragan and other aggrieved employees were paid premium pay for missed, late, and interrupted meal periods, HCC did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Barragan's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay meal premiums. Specifically, HCC paid Mr. Barragan and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay. As a result, HCC failed to provide Mr. Barragan and other aggrieved employees compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

Accordingly, HCC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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, HCC regularly failed to authorize and permit Mr. Barragan 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, HCC's company-wide policies and/or practices of understaffing and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Barragan and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. HCC also failed to schedule rest periods, which, coupled with HCC's failure to provide adequate rest period coverage, further led to Mr. Barragan and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, HCC maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Barragan and other aggrieved employees remain on the premises during their rest periods. Because Mr. Barragan and other aggrieved employees were restricted from leaving HCC's 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, HCC effectively maintained control over Mr. Barragan and other aggrieved employees during rest periods.

As a result of HCC's practices and policies, Mr. Barragan 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. Barragan had to forgo majority of his rest periods due to the lack of coverage, heavy workload, and HCC's failure to schedule rest periods for employees.

HCC has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Barragan and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HCC did pay Mr. Barragan and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HCC did not pay Mr. Barragan and other aggrieved employees at the correct rate of pay for premium wages because HCC failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or

other forms of compensation, in the regular rate of pay. As a result, HCC denied Mr. Barragan and other aggrieved employees rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

Accordingly, HCC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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. HCC has not provided Mr. Barragan and other aggrieved employees with properly itemized wage statements. 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, HCC has knowingly and intentionally provided Mr. Barragan and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HCC issued uniform wage statements to Mr. Barragan 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/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, HCC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because HCC did not record the time Mr. Barragan and other aggrieved employees spent working off-the-clock clock, HCC did not list the correct amount of gross wages and net wages earned by Mr. Barragan and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HCC failed to accurately list the total number of hours worked by Mr. Barragan 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).

Further, because HCC did not calculate Mr. Barragan's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, HCC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HCC failed to list the correct amount of net wages in violation of section 226(a)(5). HCC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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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” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), HCC willfully failed to maintain accurate payroll records for Mr. Barragan 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, HCC 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. Barragan and other aggrieved employees, in violation of section 1198. Also, in light of HCC’s failure to provide Mr. Barragan and other aggrieved employees with second 30-minute meal periods to which they were entitled, HCC kept no records of meal start and end times for second meal periods.

Because HCC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Barragan 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. Barragan 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. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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).

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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, HCC failed to pay Mr. Barragan and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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.

HCC willfully failed to pay Mr. Barragan and other aggrieved employees who are no longer employed by HCC 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 HCC's employ.

Mr. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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, Mr. Barragan and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but HCC failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Barragan would use his personal cellular phone to take photos of broken machinery and send them to his supervisor to alert the supervisor regarding the parts that needed to be ordered for repairs. As a further example, Mr. Barragan used his personal cellular phone to communicate with HCC’s management regarding work-related issues and procedures. Although HCC required Mr. Barragan and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HCC failed to reimburse them for these costs.

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

Thus, HCC 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. Barragan and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring HCC 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.” HCC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Barragan’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

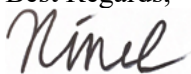
Accordingly, Mr. Barragan seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Barragan, 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 HCC 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. Barragan 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:

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

Best Regards,



Ninel Kocharyan

Copy: HILMAR CHEESE COMPANY, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **February 21, 2025**, I served the document described as:
**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE
§§ 2698, ET SEQ.**

on the interested parties in this action by sending a true copy thereof to interested parties as follows:

David Ahlem
8901 Lander Avenue
Hilmar, CA 95324

Registered Agent for Defendant,
HILMAR CHEESE COMPANY, INC.

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

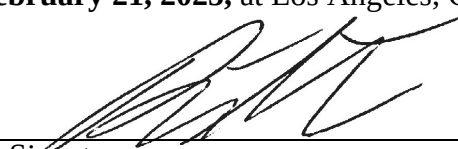
☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order Authorizing Electronic Service, the above named document(s) has been electronically served on counsel of record by transmission through the Case Anywhere system on the date below. The transmission of these documents to the Case Anywhere system was reported as complete and a copy of the Case Anywhere Transaction Receipt will be maintained along with the original document(s) and proof of service in our office.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 21, 2025**, at Los Angeles, California.

Riley McIntire
Type/Print Name


Signature