

BY FAX

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kjohnson12
By _____, Deputy
Case Number:
34-2022-00318214

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as an aggrieved employee pursuant to the Private Attorneys General Act

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

DAVID TINCUP, a proxy for the State of
California as an aggrieved employee
pursuant to the Private Attorneys General
Act ("PAGA"),

Plaintiff,

vs.

PACKAGING CORPORATION OF
AMERICA, CENTRAL CALIFORNIA
CORRUGATED, LLC, and DOES 1
through 10, inclusive,

Defendants.

Case No.:

ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
SEQ.

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF CALIFORNIA
LABOR CODE, PURSUANT TO PAGA, §§
2698, ET SEQ.**

Jury Trial Demanded

1 Plaintiff David Tincup (“Plaintiff”), a proxy for the State of California as an aggrieved
2 employee, alleges, on behalf the State of California and all aggrieved employees, as follows:

3 JURISDICTION AND VENUE

4 1. This is a law enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 current and former employees who worked for Packaging Corporation of America, Central
8 California Corrugated, LLC, and DOES 1 through 10, inclusive (collectively “Defendants”) in
9 California as non-exempt, hourly-paid employees, and against whom one or more violations of
10 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
11 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
12 were committed, as set forth in this complaint (“Aggrieved Employees”), at any time between
13 one year before Plaintiff’s submission of the LWDA Notice (defined below) in advance of
14 Plaintiff’s filing of this complaint (in addition to all days the period was stayed or tolled) until
15 judgment. Plaintiff’s pro-rata share of civil penalties sought in this action does not exceed
16 \$75,000.

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

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

1 controversy requirement for federal diversity jurisdiction in this action, and that diversity
2 jurisdiction cannot be established when Plaintiff's share of the civil penalties attributable to
3 violations personally suffered are less than \$75,000. *Id.* at 1122.

4 4. Venue is proper in this Court because Defendants employ Aggrieved
5 Employees in this county and Labor Code violations occurred throughout California,
6 including in this county. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda*
7 *County*, 60 Cal.App.5th 1069, 1075 (2021) ("Venue is proper in any county in which an
8 aggrieved employee worked and Labor Code violations allegedly occurred.")

9 5. PAGA authorizes aggrieved employees to sue as private attorneys general their
10 current or former employers for civil penalties for violations of various provisions in the
11 California Labor Code.

12 6. The State of California is the real party in interest under PAGA.

13 THE PARTIES

14 7. Plaintiff is a resident of California. Defendants employed Plaintiff from
15 approximately November 1, 2015, to approximately September 9, 2021, as a non-exempt
16 hourly-paid production technician at Defendants' location in Kingsburg, California. Plaintiff
17 typically worked eight to twelve hours or more per workday, five to seven days per week, and
18 up to forty or more hours per week. Plaintiff frequently worked the night shift. Plaintiff's job
19 duties included, but were not limited to, production of corrugated materials, quality control,
20 and cleaning the production warehouse.

21 8. Plaintiff is informed and believes, and thereon alleges, that Defendants are
22 corporations authorized to do, and doing business in California, and at all times hereinafter
23 mentioned, an employer whose employees are engaged throughout this county and the State of
24 California.

25 9. Plaintiff is informed and believes, and thereon alleges, that Defendants are
26 manufacturers of containerboard products and uncoated freesheet papers in North America.
27 Plaintiff is further informed and believes that Defendants own and operate nine plants
28 throughout California.

1 10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
2 under the fictitious names DOES 1 through 10 and will seek leave of this Court to amend the
3 complaint and serve such fictitiously named defendants once their names and capacities become
4 known. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the
5 partners, agents, owners, shareholders, managers, or employees of the other named Defendants,
6 and that each and all of the acts and omissions alleged herein were performed by, or is
7 attributable to, Defendants each acting as the agent, employee, alter ego, joint employer, and/or
8 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
9 within the course and scope of such agency, employment, joint venture, or concerted activity
10 with legal authority to act on the others' behalf. The acts of any and all Defendants were in
11 accordance with, and represent, the official policy of Defendants.

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

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

19 **PAGA REPRESENTATIVE ALLEGATIONS**

20 13. Plaintiff is informed and believes that Defendants maintain a centralized Human
21 Resources department for all non-exempt, hourly-paid employees working for Defendants in
22 California, including Plaintiff and Aggrieved Employees. At all relevant times, Defendants
23 issued and maintained uniform, standardized practices and procedures for all non-exempt,
24 hourly-paid employees in California, including Plaintiff and Aggrieved Employees, regardless
25 of their location or position.

26 14. Upon information and belief, Defendants process payroll for all non-exempt,
27 hourly-paid employees working for Defendants in California, including Plaintiff and Aggrieved
28 Employees. Further, Defendants issue the same uniform and formatted wage statements to all

1 non-exempt, hourly-paid employees in California, irrespective of their work location, position,
2 or manner in which each employee's employment ended. Defendants' payroll department
3 processed payroll for non-exempt, hourly-paid employees in the same manner throughout
4 California. In other words, Defendants utilized the same methods and formulas when calculating
5 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

6 15. Defendants continue to employ non-exempt, hourly-paid employees in
7 California.

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

12 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
13 Aggrieved Employees were not fully compensated because, among other reasons, all hours
14 worked may not have been recorded and because Defendants did not always pay for all hours
15 worked.

16 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Aggrieved Employees were entitled to receive certain
18 wages for overtime compensation and that they were not receiving overtime wages at the correct
19 overtime rate and/or for work that was required to be performed.

20 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least
22 minimum wages for all hours worked. In violation of the California Labor Code, Plaintiff and
23 Aggrieved Employees were not paid at least minimum wages for all work performed.

24 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in
26 accordance with the Labor Code; that Plaintiff and Aggrieved Employees were entitled to
27 payment of one additional hour of pay at their regular rates of compensation when they were not
28 provided with timely, uninterrupted, thirty-minute meal periods; and that Plaintiff and

1 Aggrieved Employees were not provided with all meal periods nor payment of one additional
2 hour of pay at their regular rates of compensation when they did not receive a timely,
3 uninterrupted, thirty-minute meal period.

4 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in
6 accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or
7 should have known that Plaintiff and Aggrieved Employees were entitled to payment of one
8 additional hour of pay at their regular rates of compensation when they were not provided with a
9 compliant rest period, and that Plaintiff and Aggrieved Employees were not provided compliant
10 rest periods nor payment of one additional hour of pay at their regular rates of compensation
11 when they were not provided a compliant rest period.

12 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Aggrieved Employees were entitled to receive complete
14 and accurate wage statements in accordance with California law. In violation of the California
15 Labor Code, Plaintiff and Aggrieved Employees were not provided complete and accurate wage
16 statements.

17 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to timely comply with requests from Plaintiff and other
19 Aggrieved Employees to inspect or receive a copy of their employment and personnel records in
20 accordance with the Labor Code but failed to do so.

21 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that they had a duty to maintain accurate and complete payroll records in
23 accordance with the Labor Code and applicable IWC Wage Order but failed to do so.

24 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that they had a duty to maintain accurate and complete time records in
26 accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

27 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment of

1 wages during their employment. In violation of the California Labor Code, Plaintiff and
2 Aggrieved Employees did not receive payment of all wages, including, but not limited to,
3 overtime wages, minimum wages, vacation pay, meal period and rest period premium wages,
4 within permissible time periods.

5 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment of
7 all wages earned upon termination of employment. In violation of the California Labor Code,
8 Plaintiff and Aggrieved Employees did not receive payment of all wages due, including, but not
9 limited to, overtime wages, minimum wages, vacation pay, meal period and rest period premium
10 wages, within permissible time periods.

11 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other Aggrieved Employees were entitled to
13 reimbursement for all business-related expenditures and/or losses they incurred during the
14 course and scope of their employment, and that they did not receive reimbursement of
15 applicable business-related expenditures and/or losses they incurred.

16 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Defendants had a duty to provide reasonably comfortable work areas
18 for their employees consistent with industry-wide standards, but failed to do so.

19 30. Plaintiff is informed and believes, and thereon alleges, that Defendants have
20 implemented a policy and practice that has denied Plaintiff and other Aggrieved Employees of
21 their vacation pay at their final rates of pay. Defendants have failed to pay Plaintiff as well as
22 the Aggrieved Employees their vacation pay at their final rates of pay at termination.

23 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
25 and Aggrieved Employees for all hours worked, and that Defendants had the financial ability to
26 pay such compensation, but failed to do so, and falsely represented to Plaintiff and Aggrieved
27 Employees that they were properly denied wages, all in order to increase Defendants' profits.

28 32. At all times herein set forth, PAGA provides that any provision of law under the

1 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
2 collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the
3 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by
4 aggrieved employees in a civil action brought on behalf of themselves and other current or
5 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

6 33. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
7 person who was employed by the alleged violator and against whom one or more of the alleged
8 violations was committed.”

9 34. Plaintiff and other current and former employees of Defendants are “aggrieved
10 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or
11 former employees and one or more of the alleged violations were committed against them.

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

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

1 California Labor Code section 2699 to recover civil penalties.

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

5 (a) The aggrieved employee or representative shall give (a) written notice by
6 online filing with the LWDA and by certified mail to the employer of the
7 specific provisions of the California Labor Code alleged to have been
8 violated (other than those listed in Section 2699.5), including the facts
9 and theories to support the alleged violation.

10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 Section 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 within
16 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 37. On or about February 7, 2022, Plaintiff provided written notice by online filing to
23 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
24 Labor Code alleged to have been violated, including facts and theories to support the alleged
25 violations, accompanied by the applicable filing fee of seventy-five dollars (\$75). A true and
26 correct copy of Plaintiff's written notice to the LWDA and Defendants dated February 7, 2022,
27 is attached as Exhibit 1.

28 38. As of the filing of this complaint, 65 days have passed since Plaintiff sent the

1 LWDA Notice described above to the LWDA, and the LWDA has not responded that it intends
2 to investigate Plaintiff's claims and Defendants have not cured the violations.

3 39. Thus, Plaintiff has satisfied the administrative prerequisites under California
4 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
5 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 223,
6 225.5, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5,
7 2800, and 2802, as well as all applicable IWC Wage Orders.

8 40. Defendants, at all times relevant to this complaint, were employers or persons
9 acting on behalf of an employer(s) who violated Plaintiff's and Aggrieved Employees' rights by
10 violating various sections of the California Labor Code as set forth herein.

11 41. As set forth below, Defendants have violated numerous provisions of both the
12 Labor Code sections regulating hours and days of work, as well as the applicable IWC Wage
13 Order.

14 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
15 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
16 general, seeks assessment and collection of civil penalties for himself, all Aggrieved Employees,
17 and the State of California against Defendants, in addition to other remedies, for violations of
18 California Labor Code sections 201, 202, 203, 223, 225.5, 226(a), 226(c), 226.7, 510, 512(a),
19 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, and 2802, as well as all applicable
20 IWC Wage Orders.

21 **FIRST CAUSE OF ACTION**

22 **For Civil Penalties Pursuant to California Labor Code sections 2698, *et seq.***

23 **(Against all Defendants)**

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

26 44. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various
27 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
28 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 223, 226(a), 226.7, 510,

1 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits aggrieved
2 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
3 sections not found in section 2699.5, including sections 225.5, 226(c), 1182.12, and 1198.5.

4 45. Defendants' conduct, as alleged herein, violates numerous sections of the
5 California Labor Code, including, but not limited to, the following:

- 6 (a) Violations of Labor Code sections 510 and 1198, and the applicable IWC
7 Wage Order for Defendants' failure to compensate Plaintiff and
8 Aggrieved Employees with all required overtime pay, as set forth below;
- 9 (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, and 1197.1,
10 and the applicable IWC Wage Order for Defendants' failure to
11 compensate Plaintiff and Aggrieved Employees with at least minimum
12 wages for all hours worked, as set forth below;
- 13 (c) Violations of Labor Code sections 226.7, 512(a), and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
15 and Aggrieved Employees with meal periods and/or pay meal period
16 premiums, as set forth below;
- 17 (d) Violations of Labor Code sections 226.7 and 1198, and the applicable
18 IWC Wage Order for Defendants' failure to provide Plaintiff and
19 Aggrieved Employees with rest periods and/or pay rest period premiums,
20 as set forth below;
- 21 (e) Violations of Labor Code sections 226(a) and 1198, and the applicable
22 IWC Wage Order for failure to provide accurate and complete wage
23 statements to Plaintiff and Aggrieved Employees, as set forth below;
- 24 (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable
25 IWC Wage Order for failure to maintain accurate payroll records, as set
26 forth below;
- 27 (g) Violations of Labor Code section 1198 and the applicable IWC Wage
28 Order for failure to maintain accurate time records, as set forth below;

- 1 (h) Violations of Labor Code sections 201, 202, and 203, for failure to timely
2 pay all earned wages upon termination, as set forth below;
- 3 (i) Violations of California Labor Code sections 226(d) and 1198.5 for
4 failure to provide the right to inspect and/or produce Plaintiff's
5 employment records upon request within the required time frame as set
6 forth below;
- 7 (j) Violations of Labor Code section 2800 and 2802 for failure to reimburse
8 necessary expenditures and losses incurred by Plaintiff and other
9 Aggrieved Employees in the performance of their jobs, as set forth
10 below; and
- 11 (k) Violations of Labor Code section 1198 and the applicable IWC Wage
12 Order for failure to provide reasonably comfortable work areas to
13 Plaintiff and other Aggrieved Employees consistent with industry-wide
14 standards, as set forth below.

15 **FAILURE TO PAY OVERTIME WAGES IN**
16 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND**
17 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11010 SUBD. 3**

18 46. Labor Code section 1198 makes it illegal to employ an employee under
19 conditions of labor that are prohibited by the applicable wage order. California Labor Code
20 section 1198 requires that "... the standard conditions of labor fixed by the commission shall be
21 the ... standard conditions of labor for employees. The employment of any employee ... under
22 conditions of labor prohibited by the order is unlawful."

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

27 48. Specifically, the applicable IWC Wage Order provides that Defendants are and
28 were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a day

1 or more than forty hours in a workweek, at the rate of time and one-half for all hours worked in
2 excess of eight hours in a day or more than forty hours in a workweek.

3 49. Wage Order further provides that Defendants are and were required to pay
4 Plaintiff and Aggrieved Employees working more than twelve hours in a day, overtime
5 compensation at a rate of two times their regular rate of pay and required to pay Plaintiff and
6 Aggrieved Employees at a rate of two times their regular rate of pay for hours worked in excess
7 of eight hours on the seventh consecutive day of a work in a workweek.

8 50. An employee's regular rate of pay includes all remuneration for employment
9 paid to, or on behalf of, the employee, including non-discretionary bonuses, incentive pay, and
10 shift differentials.

11 51. California Labor Code section 510 codifies the right to overtime compensation at
12 one and one-half times the regular rate of pay for hours worked in excess of eight hours in a day
13 or forty hours in a week or for the first eight hours worked on the seventh day of work, and to
14 overtime compensation at twice the employee's regular rate of pay for hours worked in excess
15 of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

16 52. At all relevant times, Defendants failed to pay all overtime wages owed to
17 Plaintiff and Aggrieved Employees. During the relevant time period, Plaintiff and other
18 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in
19 excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a
20 week, and/or for the seventh consecutive day of work, sometimes because all hours that they
21 worked were not recorded, and other times because they were simply not paid for all hours that
22 were recorded and/or worked. As a result, Plaintiff believes the hours he and other Aggrieved
23 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff
24 and other Aggrieved Employees may not have been properly compensated for all hours that
25 were recorded and/or worked.

26 53. Additionally, Plaintiff and Aggrieved Employees have been subject to
27 Defendants' control during pre-shift and post-shift times, as well as during unpaid meal
28 periods resulting in unpaid overtime where they are not getting paid, which, when working

overtime eligible shifts results in underpaid overtime compensation. Based on information and belief, not all recorded work hours were paid because of rounding practices and/or inaccurate timekeeping policies and practices. As a result, Plaintiff believes the hours he and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

54. Defendants knew or should have known that, as a result of their policies, practices and/or procedures, Plaintiff and other Aggrieved Employees were at times performing their assigned duties off-the-clock, were subject to control of Defendants, and/or were suffered or permitted to perform work for which they were not paid. Defendants also knew, or should have known, that they did not compensate Plaintiff and other Aggrieved Employees for off-the-clock work or all hours worked. Because Plaintiff and other Aggrieved Employees sometimes worked shifts longer than eight hours a day, more than forty hours a week, and/or seven consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other times, Defendants simply did not pay for all the hours that were recorded. Therefore, Plaintiff and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. Defendants' failure to pay Plaintiff 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 and Wage Order No. 1.

55. Plaintiff is informed and believes that Defendants have failed to compensate Plaintiff and other Aggrieved Employees at the appropriate overtime rate for hours worked in excess of forty hours worked in a given workweek. Defendants' failure to pay Plaintiff 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 and Wage Order No. 1.

56. Plaintiff is further informed and believes, and thereon alleges, that Defendants' regular rate of pay for calculating overtime wages may not have included all required remunerations, such as shift differentials, or the correct calculation. During times when Plaintiff

1 and other Aggrieved Employees worked overtime, Defendants did not pay all overtime wages
2 by paying a lower overtime rate than required by California law.

3 57. Based on the foregoing, Plaintiff and other Aggrieved Employees are entitled to
4 recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections
5 510 and 1198 and Wage Order No. 1, pursuant to Labor Code sections 558, 1194, and/or
6 2699(a), (f), and (g).

7 **FAILURE TO PAY MINIMUM WAGES IN**
8 **VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, 1197.1 AND 1198**
9 **AND CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11010 SUBD. 4**

10 58. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197,
11 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
12 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
13 fixed is unlawful. Compensable work time defined in Wage Order No. 1 as "the time during
14 which an employee is subject to the control of an employer and includes all the time the
15 employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs.
16 tit. 8, § 11010(2)(G) (defining "Hours Worked").

17 59. Defendants have not paid for all the time Plaintiff and Aggrieved Employees
18 have worked throughout the day including all time spent working through meal periods and/or
19 any other time in the day when the employees were performing work tasks subject to the
20 control of Defendants. Plaintiff and other Aggrieved Employees are subjected to Defendants'
21 control pre-shift, post-shift, and throughout the workday, even during unpaid periods of the
22 workday such as unpaid meal periods.

23 60. Defendants also have had a continuous policy of not paying Plaintiff and
24 Aggrieved Employees for all hours worked throughout the day, including, but not limited to
25 rounding, before shifts start, after shifts end, and/or any other time in the day when the
26 employees were performing work tasks, subject to the control of Defendants.

27 61. To the extent that the off-the-clock work and/or recorded hours did not qualify
28 for overtime premium payment, Defendants did not pay at least minimum wages for those hours

1 worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223,
2 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 1. Plaintiff and other Aggrieved
3 Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest,
4 pursuant to Labor Code sections 225.5, 1194, 1197.1 and/or 2699(a), (f), and (g).

5 **FAILURE TO PROVIDE MEAL PERIODS IN**
6 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198 AND**
7 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11010 SUBD. 11**

8 62. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), and 1198, and the applicable IWC Wage Order were applicable to Plaintiff's and
10 Aggrieved Employees' employment by Defendants.

11 63. At all relevant times herein set forth, California Labor Code section 512(a)
12 provides that an employer may not require, cause, or permit an employee to work for a period of
13 more than five hours per day without providing the employee with a meal period of not less than
14 thirty minutes, except that if the total work period per day of the employee is not more than six
15 hours, the meal period may be waived by mutual consent of both the employer and the
16 employee. Under California law, first meal periods must start after no more than five hours.
17 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012).

18 64. At all relevant times herein set forth, California Labor Code sections 226.7,
19 512(a), and 1198 provide that no employer shall require an employee to work during any meal
20 period mandated by an applicable order of the IWC. The wage order's meal period requirement
21 is satisfied if "the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the
22 premises, and (3) is relieved of all duty for the entire period." *Brinker Rest. Corp.*, 53 Cal. 4th at
23 1036.

24 65. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
25 1198, and the applicable IWC Wage Order also require employers to provide a second meal
26 period of not less than thirty minutes if an employee works over ten hours per day, and if one is
27 not provided, pay an employee one additional hour of pay at the employee's regular rate of
28 compensation, except that if the total hours worked is no more than twelve hours, the second

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

3 66. Plaintiff is informed and believes, and thereon alleges, that Defendants prevented
4 Plaintiff and other Aggrieved Employees from taking all timely, uninterrupted meal periods,
5 including second meal periods, to which they were entitled. As a result of these policies and/or
6 practices, Plaintiff and other Aggrieved Employees continued to perform their assigned duties
7 without being able to take timely, compliant meal periods. Plaintiff and other Aggrieved
8 Employees had to work through part or all of their meal periods, had their meal periods
9 interrupted, and/or had to wait extended periods of time before taking meal periods. Moreover,
10 Defendants' policies and/or practices of communicating with employees regarding work-related
11 matters as well as directing employees to continue working and/or return to work during meal
12 periods resulted in employees not receiving timely, uninterrupted thirty-minute meal periods.

13 67. Defendants knew or should have known that as a result of these policies and/or
14 practices, Plaintiff and other Aggrieved Employees were prevented from being relieved of all
15 duties and required to perform some of their assigned duties during meal periods and that they
16 did not receive timely meal periods. As a result, Plaintiff and other Aggrieved Employees had to
17 work through all or part of their meal periods, have their meal periods interrupted, and/or wait
18 extended periods of time before taking meal periods.

19 68. Defendants have failed to provide meal periods to Plaintiff and other Aggrieved
20 Employees. As a matter of policy and practice, Defendants have not provided Plaintiff and
21 other Aggrieved Employees with full 30-minute meal periods for each day worked where they
22 are free from Defendants' required duties and control. For example, Defendants' placement of
23 time clocks as well as its clock-in and clock-out policies and procedures for meal periods has
24 resulted in Defendants providing meal periods of less than 30 minutes for Plaintiff and
25 Aggrieved Employees. Defendants have subjected Plaintiff and other Aggrieved Employees to
26 control and demanding duties throughout their workday, even during times which should
27 constitute uninterrupted duty-free meal periods. Defendants encourage employees to stay
28 working and/or under employer control, as opposed to encouraging the rest and nourishment

1 meal periods are designed to provide.

2 69. Defendants also engaged in a systematic, company-wide policy and/or practice of
3 not properly training Plaintiff and other Aggrieved Employees on their entitlement to meal
4 period premium payments resulting from meal period violations. As such, Plaintiff was unaware
5 of when meal period premiums were owed to him. Accordingly, Plaintiff and other Aggrieved
6 Employees did not receive all meal period premium wages owed when compliant meal periods
7 were not provided. To the extent that Defendants did pay meal period premium wages to
8 Aggrieved Employees, such payments were admissions of their failure to provide meal periods.
9 Based upon information and belief, to the extent employees were paid non-discretionary
10 compensation such as shift differential, those payments have not been included in Defendants'
11 regular rate of compensation for calculating meal period premiums and has resulted in an
12 underpayment of meal period premium wages.

13 70. Accordingly, Defendants failed to provide all meal periods and/or pay all meal
14 period premiums in violation of Labor Code sections 226.7, 512, and 1198 and Wage Order No.
15 1. Plaintiff and other Aggrieved Employees are therefore entitled to penalties, attorneys' fees,
16 costs, and interest, pursuant to Labor Code sections 226.7, 512, 558, 1198, and 2699(a), (f), and
17 (g).

18 **FAILURE TO PROVIDE REST PERIODS IN**
19 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198 AND**
20 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11010 SUBD. 12**

21 71. At all relevant times herein set forth, California Labor Code sections 226.7 and
22 1198, and the applicable IWC Wage Order were applicable to Plaintiff and Aggrieved
23 Employees' employment by Defendants.

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

1 hours.

2 73. At all relevant times, California Labor Code section 226.7 provides that no
3 employer shall require an employee to work during any rest period mandated by an applicable
4 order of the California IWC. To comply with its obligation to provide rest periods under
5 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must
6 “relinquish any control over how employees spend their break time, and relieve their employees
7 of all duties — including the obligation that an employee remain on call. A rest period, in short,
8 must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270
9 (2016). Pursuant to California Labor Code section 226.7(c) and the applicable IWC Wage
10 Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one
11 additional hour of pay at their regular rates of compensation for each workday that a required
12 rest period was not provided.

13 74. Moreover, upon information and belief, Defendants have also engaged in a
14 systematic, company-wide practice and/or policy of not paying rest period premiums owed
15 when rest periods are not provided. Additionally, Defendants paid rest period premiums at the
16 incorrect rates. Because Defendants did not properly calculate Plaintiff’s and Aggrieved
17 Employees’ regular rates of compensation by including all remunerations, such as
18 nondiscretionary bonuses, incentive pay, shift differentials, any premiums paid for rest period
19 violations were also paid at an incorrect rate and resulted in an underpayment of rest period
20 premium wages. Thus, Defendants denied Plaintiff and Aggrieved Employees rest periods and
21 failed to pay them rest period premium wages due, in violation of Labor Code section 226.7 and
22 the applicable IWC Wage Order.

23 75. As with meal periods, Defendants’ policies and/or practices prevented Plaintiff
24 and other Aggrieved Employees from being relieved of all duties to take compliant rest periods.
25 As a result, Plaintiff and other Aggrieved Employees would frequently work shifts in excess of
26 three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving
27 all uninterrupted ten-minute rest periods to which they were entitled.

28 76. Defendants have failed to authorize and permit rest periods to Plaintiff and

1 other Aggrieved Employees. As a matter of policy and practice, Defendants have not provided
2 Plaintiff and other Aggrieved Employees with net 10-minute rest periods for each day worked
3 where they are free from Defendants' required duties and control. For example, Defendants'
4 placement of time clocks as well as clock-in and clock-out policies and procedures for rest
5 periods has resulted in Defendants providing rest periods of less than 10 minutes for Plaintiff
6 and Aggrieved Employees. Defendants have subjected Plaintiff and other Aggrieved
7 Employees to control and demanding duties throughout their workday, even during times
8 which should constitute uninterrupted duty-free rest periods. Defendants encourage employees
9 to stay working and/or under employer control, as opposed to encouraging the rest and
10 nourishment rest periods are designed to provide.

11 77. Defendants also engaged in a systematic, company-wide policy and/or practice of
12 not properly training Plaintiff and other Aggrieved Employees on their entitlement to rest period
13 premium payments resulting from rest period violations. As such, Plaintiff was unaware of
14 when rest period premiums were owed to him. Accordingly, Plaintiff and other Aggrieved
15 Employees did not receive all rest period premium wages owed when compliant rest periods
16 were not provided. To the extent that Defendants did pay rest period premium wages to
17 Aggrieved Employees, such payments were admissions of their failure to provide rest periods.
18 Furthermore, based upon information and belief, to the extent employees received non-
19 discretionary remuneration, Defendants' regular rate of compensation for calculating rest period
20 premiums did not include all required remunerations or the correct calculation and resulted in an
21 underpayment of rest period premium wages. For example, to the extent Plaintiff and
22 Aggrieved Employees have been paid shift differential pay, those payments have not been
23 included in Defendants' regular rate of compensation for calculating rest period premiums and
24 has resulted in an underpayment of rest period premium wages.

25 78. Accordingly, Defendants failed to provide all rest periods and/or pay all rest
26 period premiums in violation of Labor Code sections 226.7, and 1198 and Wage Order No. 1.
27 Plaintiff and other Aggrieved Employees are therefore entitled to penalties, attorneys' fees,
28 costs, and interest, pursuant to Labor Code sections 226.7, 1198, and 2699(a), (f), and (g).

1 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN**
2 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(a) AND 1198**

3 79. Labor Code section 226(a) requires employers to make, keep and furnish true,
4 accurate, and complete employment records. Defendants have not provided Plaintiff and other
5 Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved
6 employee may seek civil penalties under Labor Code section 2699 for violations of wage
7 statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*,
8 15 Cal.App.5th 773, 788 (2017). (“a plaintiff seeking civil penalties under PAGA for a violation
9 of section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’
10 requirements of section 226(e)(1).”) Rather, Labor Code section 226.3 provides that any
11 employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250
12 per employee per violation in an initial citation and \$1,000 per employee for each violation in a
13 subsequent citation, for which the employer fails to provide the employee a wage statement or
14 fails to keep the required records pursuant to Section 226(a).

15 80. Defendants have provided Plaintiff and other Aggrieved Employees with
16 incomplete and inaccurate wage statements. Specifically, Defendants violated, among others,
17 Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Defendants did not record all
18 the hours Plaintiff and other Aggrieved Employees worked while off-the-clock and did not pay
19 all hours recorded, Defendants did not list the correct amount of gross wages earned by Plaintiff
20 and other Aggrieved Employees in compliance with Section 226(a)(1). Similarly, Defendants
21 failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees
22 in violation of Section 226(a)(5). Defendants have also failed to accurately list the total hours
23 worked by Plaintiff and other Aggrieved Employees for work performed while off-the-clock in
24 violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and
25 the corresponding number of hours worked in violation of Section 226(a)(9). In addition, the
26 total regular and overtime hours listed in Defendants’ wage statements, when added together,
27 do not sum up to the total hours worked by the employee during the pertinent time period.
28 Likewise, Defendants provide wage statements which do not properly itemize the total hours

1 worked because Defendants itemize the incorrect total number of hours worked. Without
2 additional information regarding the wage statement, an employee cannot simply ‘arrive at the
3 sum of hours worked.’ As such, Defendants’ wage statements do not comply with Labor Code
4 section 226(a)(2). Additionally, because Defendants did not calculate other Aggrieved
5 Employees’ regular rate of pay correctly for purposes of paying overtime and/or premium
6 wages, it did not list the correct amount of gross wages and net wages earned by other
7 Aggrieved Employees in compliance with Sections 226(a)(1) and (5). Defendants also failed to
8 correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime
9 rates of pay and potentially failed to list the correct rates of pay for meal period and rest period
10 premium wages, in violation of Section 226(a)(9). Furthermore, because Defendants failed to
11 pay all meal period and rest period premiums to Plaintiff and other Aggrieved Employees,
12 Defendants did not list the correct amount of gross wages earned by Plaintiff and other
13 Aggrieved Employees in compliance with Section 226(a)(1). For the same reason, Defendants
14 failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees
15 in violation of Section 226(a)(5).

16 81. Plaintiff and other Aggrieved Employees are therefore entitled to recover
17 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 226(a), 226.3,
18 1198.5, and/or 2699(a), (f), and (g).

19 **FAILURE TO PROVIDE OR PRODUCE EMPLOYMENT RECORDS IN**
20 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(c), 1198.5, AND 1198**

21 82. At all relevant time herein set forth, California Labor Code section 226(b)
22 provides that every employer shall furnish current and former employees the right to inspect
23 or copy records pertaining to their employment, upon reasonable request to the employer.
24 Labor Code Section 226(c) provides that an employer must comply with a request made
25 pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the
26 employee’s request.

27 83. Additionally, Labor Code section 226(c) provides in relevant part:

28 An employer who receives a written or oral request to inspect or receive

1 a copy of records pursuant to subdivision (b) pertaining to a current or
2 former employee shall comply with the request as soon as practicable,
3 but no later than 21 calendar days from the date of the request. A
4 violation of this subdivision is an infraction.

5 84. Similarly, Labor Code section 1198.5 requires an employer to timely produce
6 certain employment records upon the request of an employee or their representative.
7 Specifically, Section 1198.5 provides in relevant part:

8 (a) Every current and former employee, or his or her representative, has
9 the right to inspect and receive a copy of the personnel records that the
10 employer maintains relating to the employee's performance or to any
11 grievance concerning the employee...

12 (b)(1) The employer shall make the contents of those personnel records
13 available for inspection to the current or former employee, or his or her
14 representative, at reasonable intervals and at reasonable times, but not
15 later than 30 calendar days from the date the employer receives a written
16 request...

17 (k) If an employer fails to permit a current or former employee, or his
18 or her representative, to inspect or copy personnel records within the
19 times specified in this section, or times agreed to by mutual agreement
20 as provided in this section, the current or former employee or the Labor
21 Commissioner may recover a penalty of seven hundred fifty dollars
22 (\$750) from the employer...

23 85. At all times relevant herein, California Labor Code section 226(f) states "[a]
24 failure by an employer to permit a current or former employee to inspect or copy records
25 within the time set forth in subdivision (c) entitles the current or former employee or the
26 Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the
27 employer."

28 86. At all times relevant herein, California Labor Code section 226(h) states "[a]n
employee may also bring an action for injunctive relief to ensure compliance with this section,
and is entitled to an award of costs and reasonable attorney's fees."

87. At all times relevant herein, the IWC Wage Order No. 1-2001, section 7(A),
provides "[e]very employer shall keep accurate information with respect to each employee
including the following: (1) Full name, home address, occupation and social security number.
(2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when

1 the employee begins and ends each work period. Meal periods, split shift intervals and total
2 daily hours worked shall also be recorded. Meal periods during which operations cease and
3 authorized rest periods need not be recorded. (4) Total wages paid each payroll period,
4 including value of board, lodging, or other compensation actually furnished to the employee.
5 (5) Total hours worked in the payroll period and applicable rates of pay. This information
6 shall be made readily available to the employee upon reasonable request.”

7 88. During the relevant time period, Plaintiff sent Defendants reasonable written
8 requests for documents and records relating to his employment with Defendants. During the
9 relevant time period, Defendants failed to timely produce for inspection and copying or
10 otherwise permit inspection and copying of documents and records relating to Plaintiff’s
11 employment.

12 89. Plaintiff requested that Defendants produce his employment records pursuant to
13 California Labor Code sections 226(c) and 1198.5. Labor Code section 2699.3(c) permits
14 aggrieved employees, including Plaintiff, to recover civil penalties for Labor Code sections
15 226(c) and 1198.5 violations. Plaintiff and other non-party Aggrieved Employees are therefore
16 entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to sections
17 2699(a), (f), and (g).

18 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN**
19 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1174(d) AND 1198 AND**
20 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11010 SUBD. 7**

21 90. At all times relevant herein set forth, Labor Code section 1174(d) provides that
22 “[e]very person employing labor in this state shall ... [k]eep a record showing the names and
23 addresses of all employees employed and the ages of all minors” and “[k]eep, at a central
24 location in the state or at the plants or establishments at which employees are employed, payroll
25 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
26 units earned by and any applicable piece rate paid to, employees employed at the respective
27 plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a
28 \$500 civil penalty if they fail to maintain accurate and complete records as required by Section

1 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
2 Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved
3 Employees showing the daily hours they worked and the wages paid as a result of failing to
4 record all hours worked and/or failing to correctly list the gross wages and/or net wages earned
5 by them in violation of Labor Code section 1174(d).

6 91. Labor Code section 1198 provides that the maximum hours of work and the
7 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in
8 the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any
9 employees for longer hours than those fixed by the order or under conditions of labor prohibited
10 by the order is unlawful.” Pursuant to the applicable Wage Order, employers are required to
11 keep accurate time records showing when the employee begins and ends each work period and
12 meal period. Cal. Code Regs. tit. 8, § 11010, subd. 7. During the relevant time period,
13 Defendants failed, on a company-wide basis, to keep accurate records of shift and meal period
14 start and stop times for Plaintiff and other Aggrieved Employees, in violation of Section 1198
15 and Wage Order No. 1.

16 92. Because Defendants failed to provide, among other things, the accurate number
17 of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in
18 effect during the pay period and the corresponding number of hours worked on wage statements,
19 Plaintiff and other Aggrieved Employees have been prevented from verifying, solely from
20 information on the wage statements themselves, that they were paid correctly and in full and
21 were given confusing and/or incomplete information about their employer. Instead, Plaintiff and
22 other Aggrieved Employees have had to look to sources outside of the wage statements
23 themselves and reconstruct time records to determine whether in fact they were paid correctly
24 and the extent of underpayment, thereby causing them injury.

25 93. Plaintiff and other Aggrieved Employees are therefore entitled to recover
26 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
27 2699(a), (f), and (g).
28

**FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN
VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA
CODE OF REGULATIONS TITLE 8, SECTION 11010 SUBDIVISION 7**

94. At all times relevant herein set forth, 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 Orders. 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. Cal. Code Regs. Tit. 8, § 11010(7)(A).

95. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times for Plaintiff and other Aggrieved Employees, in violation of Section 1198 and Wage Order No. 1.

96. Because Defendants failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Plaintiff 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 and were given confusing and/or incomplete information about their employer. Instead, Plaintiff 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.

97. Plaintiff and other Aggrieved Employees are therefore entitled to recover penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

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**FAILURE TO PAY WAGES UPON TERMINATION IN
VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201, 202 AND 203**

98. At all times relevant herein set forth, 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 hours thereafter, unless the employee has given seventy-two 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.

99. Defendants wilfully failed to pay Plaintiff and other Aggrieved Employees who are no longer employed by Defendants all their earned wages at the time of discharge, or within seventy-two hours of their leaving Defendants' employ in violation of California Labor Code sections 201-203. For example, Plaintiff was untimely paid his final wages after being terminated. Although Plaintiff was "suspended" on or about September 9, 2021, this pretextual suspension constituted a termination for which final wages were not paid on the date of termination. Moreover, on or about September 21, 2021, Defendants sent via overnight mail a final paycheck for "all wages earned through the date of separation-September 21, 2021, along with [Plaintiff's] accrued, unused vacation." However, Defendants failed to provide Plaintiff with his accrued vacation pay until approximately September 25, 2021. Although Defendants may have paid Plaintiff some daily wages for the delay in paying final wages, Defendants failed to do so on a daily basis from September 9 through and including September 25, 2021, as required by Labor Code sections 201-203.

100. Furthermore, Defendants did not pay Plaintiff and other Aggrieved Employees who are no longer employed by Defendants all their earned wages, at the time of discharge, or within seventy-two hours of their leaving Defendants' employ including, but not limited to, overtime wages, minimum wages, vacation, and/or meal period and rest period premium wages.

101. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within 72

1 hours of their leaving Defendants' employment, violates Labor Code sections 201 and 202.
2 Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys'
3 fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

4 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN VIOLATION**
5 **OF CALIFORNIA LABOR CODE SECTION 2802 AND CALIFORNIA CODE OF**
6 **REGULATIONS TITLE 8, SECTION 11010 SUBD. 9**

7 102. At all times relevant, Labor Code sections 2800 and 2802 require employers to
8 pay for all necessary expenditures and losses incurred by the employee in the performance of
9 their job. The purpose of Labor Code section 2802 is to prevent employers from passing off
10 the cost of doing business and operating expenses onto their employees. *Cochran v. Schwan's*
11 *Home Serv., Inc.*, 228 Cal.App.4th 1137, 1144 (2014). The applicable wage order, IWC Wage
12 Order 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are
13 necessary to the performance of a job, such tools and equipment shall be provided and
14 maintained by the employer, except that an employee whose wages are at least two (2) times
15 the minimum wage provided herein may be required to provide and maintain hand tools and
16 equipment customarily required by the trade or craft." Cal. Code Regs. tit. 8 § 11010, subd.
17 9(B).

18 103. Defendants, on an organization-wide basis, required Plaintiff and other
19 Aggrieved Employees to use their own hand tools or other equipment and these hand tools and
20 other equipment have been necessary to the performance of Plaintiff's and other Aggrieved
21 Employees' jobs. Defendants have not provided and maintained such hand tools and other
22 equipment.

23 104. As a result of Defendants' violation of Labor Code section 2802 and the
24 applicable wage order, Plaintiff and other Aggrieved employees have incurred necessary
25 business-related expenses and costs that Defendants have not fully reimbursed, including but
26 not limited to payments for hand tools and equipment customarily required by Plaintiff and
27 other Aggrieved Employees' trade or craft.

28 105. Defendants' policy, practice, and/or procedure of passing operating costs onto

1 Plaintiff and other Aggrieved Employees violates Labor Code section 2802 and the applicable
2 wage order, and Plaintiff and other Aggrieved Employees are therefore entitled to recover
3 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and
4 (g).

5 **FAILURE TO PROVIDE REASONABLE WORKING CONDITIONS (EXCESSIVE**
6 **HEAT) IN VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND**
7 **CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11010 SUBD. 15**

8 106. Labor Code section 1198 provides that no employer may employ an employee
9 under conditions of labor that are prohibited by the applicable IWC Wage Order. Labor Code
10 section 1198 further requires that "... the standard conditions of labor fixed by the
11 commission shall be the ... standard conditions of labor for employees. The employment of
12 any employee ... under conditions of labor prohibited by the order is unlawful."

13 107. Wage Order No. 1 provides that:

14
15 (A) The temperature maintained in each work area shall
16 provide reasonable comfort consistent with industry-wide
standards for the nature of the process and the work performed.

17 (B) If excessive heat or humidity is created by the work
18 process, the employer shall take all feasible means to reduce such
19 excessive heat or humidity to a degree providing reasonable
20 comfort. Where the nature of the employment requires a
temperature of less than 60° F., a heated room shall be provided
to which employees may retire for warmth, and such room shall
be maintained at not less than 68°.

21 Cal. Code Regs. tit. 8 § 11010, subd. 15.

22 108. During the relevant time period, Plaintiff and other Aggrieved Employees
23 worked in Defendants' warehouses (or plants) producing corrugated materials with the use of
24 large industrial machinery. The machinery used to produce such material emits heat and
25 steam. Oftentimes, the warehouse (or plants) would reach temperatures exceeding 100 degrees
26 due to the heat. Plaintiff was discouraged from taking breaks to recover from the heat.

27 109. Defendants' policies, practices, and/or procedures of failing to provide Plaintiff
28 and other Aggrieved Employees with working conditions that provide reasonable comfort

1 consistent with industry-wide standards for the nature of the process and the work performed
2 are in violation of California Labor Code section 1198 and the applicable IWC Wage Order.

3 110. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
4 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and
5 (g).

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff requests a trial by jury.

8 **PRAYER FOR RELIEF**

9 Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for
10 relief and judgment against Defendants, jointly and severally, as follows:

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

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

15 2. That the Court declare, adjudge and decree that Defendants violated the
16 following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510
17 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1 and
18 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198
19 (by failing to provide all meal periods and/or meal premiums); 226.7 and 1198 (by failing to
20 provide all rest periods and/or rest premiums); 226(a) and 1198 (by failing to provide accurate
21 wage statements); 226(b), 226(c), 1198.5 and 1198 (by failing to provide employment records
22 upon request); 1174(d), 1198 and California Code of Regulations, Title 8, section 11010(7) (by
23 failing to maintain accurate and complete payroll records); 1198 and California Code of
24 Regulations, Title 8, section 11010(7) (by failing to maintain accurate and complete time
25 records); 201, 202 and 203 (by failing timely to pay all earned wages upon termination); 2802
26 and California Code of Regulations, Title 8, section 11010(9) (by failing to reimburse necessary
27 business related expenses); and 1198 and California Code of Regulations, Title 8, Section 11010
28 subdivision 15 (by failing to maintain reasonable working conditions – excessive heat);

1 3. For civil penalties pursuant to California Labor Code sections 226.3, 558,
2 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
3 sections 201, 202, 203, 223, 225.5, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194,
4 1197, 1197.1, 1198, 1198.5, and 2802, as well as all applicable IWC Wage Orders;

5 4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a),
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 203, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12,
8 1194, 1197, 1197.1, 1198, 1198.5, and 2802;

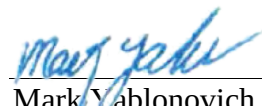
9 5. For pre-judgment and post-judgment interest as provided by law; and

10 6. For such other and further relief as the Court may deem equitable and
11 appropriate.

12
13 Dated: April 13, 2022

Respectfully submitted,

Law Offices of Mark Yablonovich

14
15
16 By: 

Mark Yablonovich

Tony Roberts

Lisa J. Hartlep

Attorneys for Plaintiff David Tincup, a proxy for
the State of California as an aggrieved employee
pursuant to the Private Attorneys General Act

EXHIBIT 1

David Tincup v. Packaging Corporation of America, et al.

LAW OFFICES OF
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February 7, 2022

VIA ONLINE SUBMISSION

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

Subject: *David Tincup v. Packaging Corporation of America and Central CA Corrugated, LLC.*

Dear PAGA Administrator:

This law firm represents David Tincup (“Mr. Tincup”) in connection with his claims under the California Labor Code against his former employers Packaging Corporation of America and Central California Corrugated, LLC (collectively “PCA”).

The employers may be contacted directly:

Packaging Corporation of America
1955 W. Field Ct.
Lake Forrest, IL 60045

Central California Corrugated, LLC
909 Union St.
Kingsburg, CA 93631

Mr. Tincup intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for PCA’s 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. Tincup seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PCA in California as non-exempt, hourly-paid employees and who received or should have received at least one wage statement during the relevant time period which begins one year prior to the date of this notice (“Aggrieved Employees”). Mr. Tincup sends this letter in compliance with the notice and reporting requirements of Labor Code section 2699.3.

PCA employed Mr. Tincup from approximately November 1, 2015, to approximately September 9, 2021, as a non-exempt, hourly-paid sales employee out of PCA’s Kingsburg location. Mr. Tincup typically worked approximately eight to twelve hours or more per workday, five to seven days per week, and up to forty hours or more per week. His job duties included, but were not limited to, production of corrugated materials, quality control, and cleaning the production warehouse.

PCA committed one or more of the following Labor Code violations against Mr. Tincup and/or

Re: *David Tincup v. Packaging Corporation of America and Central California Corrugated, LLC*

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the Aggrieved Employees, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

PCA’S Company-Wide and Uniform Payroll and Human Resources Practices

PCA is a manufacturer of containerboard products and uncoated freesheet papers in North America. Upon information and belief, PCA maintains a centralized Human Resources department in California for all non-exempt, hourly-paid employees working for PCA in California, including Mr. Tincup and other Aggrieved Employees. At all relevant times, PCA issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Mr. Tincup and other Aggrieved Employees, regardless of their location, position, or job duties.

Upon information and belief, PCA maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for PCA in California, including Mr. Tincup and other Aggrieved Employees. Further, PCA issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. PCA’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, PCA has utilized the same methods and formulas when calculating wages and any other remunerations owed to Mr. Tincup and other Aggrieved Employees in California.

Violation of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11010 (“Wage Order No. 1”),² require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. The applicable Wage Order further provides that employers are required to pay employees working more than twelve hours

¹ These facts, theories, and claims are based on Mr. Tincup’s experience and counsel’s review of those records currently available relating to Mr. Tincup’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, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations. Thus, Mr. Tincup 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.

² To the extent any other Wage Order applies to any of the claims in this letter, such as Wage Order 4, PCA also violated those wage orders.

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in a day or in excess of eight hours on the seventh consecutive day overtime compensation at a rate of two times their regular rate of pay.

PCA failed to pay all overtime wages owed to Mr. Tincup and other Aggrieved Employees. During the relevant time period, Mr. Tincup and other Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight (or twelve) hours in a day, in excess of forty hours in a week, and/or for the seventh consecutive day of work (or in excess of eight hours on the seventh consecutive day of work), sometimes because all hours that they worked were not recorded, and other times because they were simply not paid for all hours that were recorded and/or worked. Aggrieved Employees have been subject to PCA's control during pre-shift and post-shift times, as well as during unpaid meal periods resulting in unpaid overtime where they are not getting paid, which, when working overtime-eligible shifts, results in underpaid overtime compensation. Based on information and belief, not all recorded work hours were paid because of inaccurate timekeeping policies and practices. As a result, Mr. Tincup believes the hours he and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Mr. Tincup and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

PCA knew or should have known that, as a result of its policies, practices and/or procedures, Mr. Tincup and other Aggrieved Employees were at times performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of PCA, and/or were suffered or permitted to perform work for which they were not paid. PCA also knew, or should have known, that it did not compensate Mr. Tincup and other Aggrieved Employees for off-the-clock work, or all hours worked. Because Mr. Tincup and other Aggrieved Employees sometimes worked shifts longer than eight or twelve hours a day, more than forty hours a week, and/or seven consecutive days (or in excess of eight hours on the seventh consecutive day), some of the unrecorded work qualified for overtime premium pay. At other times, Mr. Tincup simply did not pay for all the hours that were recorded. Therefore, Mr. Tincup and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. PCA's failure to pay Mr. Tincup 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 and the applicable Wage Order.

Based on the foregoing, Mr. Tincup and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 510 and 1198 and the applicable Wage Order, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11010, Section F Subdivision 4

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful.

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Compensable work time is defined by the applicable Wage Order 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, subd. 2(G) (defining “Hours Worked”).

PCA has not paid for all the time Mr. Tincup and Aggrieved Employees have worked throughout the day including all time in the workday when the employees were performing work tasks subject to the control of PCA. Mr. Tincup and other Aggrieved Employees are subjected to PCA’s control pre-shift, post-shift, and throughout the workday.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, PCA did not pay at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order. Mr. Tincup and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 225.5,³ 1194, 1197.1 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11010 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and the applicable Wage Order require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee’s regular rate of compensation for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted duty-free and control-free meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six 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 no later than the end of an employee’s fifth hour of work. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11010, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours in a day, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was taken.

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. The applicable Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods,

³ Labor Code section 2699.3(c) permits aggrieved employees, including Mr. Tincup, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including section 225.5.

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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 (3½) hours. Cal. Code Regs. tit. 8, § 11010, subd. 12. To comply with its obligation to provide rest periods under Labor Code section 226.7 and the applicable 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, 269-270 (2016).

PCA has failed to provide meal periods and authorize and permit rest periods to Mr. Tincup and other Aggrieved Employees. As a matter of policy and practice, PCA has not provided Mr. Tincup and other Aggrieved Employees with full 30-minute meal periods and net 10-minute rest periods for each day worked where they are free from PCA’s required duties and control. PCA has subjected Mr. Tincup and other Aggrieved Employees to control and demanding duties throughout their workday, even during times which should constitute uninterrupted duty-free rest periods and meal periods.

PCA knew or should have known that as a result of its policies and/or practices, Mr. Tincup and other Aggrieved Employees were prevented from being relieved of all duties and employer control and required to perform some of their assigned duties during meal periods and rest periods and that they did not receive timely meal periods and rest periods. As a result, Mr. Tincup and other Aggrieved Employees have had to work through all or part of their meal periods and rest periods, have their meal periods and rest periods interrupted, and/or have waited extended periods of time before taking meal periods and rest periods.

PCA has also engaged in a systematic, company-wide policy and/or practice of not properly training Mr. Tincup and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Mr. Tincup and other Aggrieved Employees have been unaware of when meal period and/or rest period premiums were owed to them. Based upon information and belief, Mr. Tincup and other Aggrieved Employees have not received all meal period and/or rest period premium wages owed when compliant meal periods and rest periods have not been provided. To the extent that PCA did pay meal period and/or rest period premium wages to Mr. Tincup and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods.⁴

Accordingly, PCA has failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums, in violation of Labor Code sections 226.7, 512, and 1198 and

⁴ Furthermore, based upon information and belief, to the extent employees should or were paid bonuses or incentives, those payments have not been included in PCA’s regular rate of compensation for calculating meal period and/or rest period premiums and has resulted in an underpayment of meal period and/or rest period premium wages.

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the applicable Wage Order. Mr. Tincup and other Aggrieved Employees are therefore entitled to civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 226.7, 558 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 226(a)

Labor Code section 226(a) requires employers to keep and furnish accurate and complete employment records. PCA has not provided Mr. Tincup and other Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."). Rather, 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).

Labor Code section 226(c) provides as follows: "An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction."

PCA has provided Mr. Tincup and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, PCA has violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because PCA has not recorded all the hours Mr. Tincup and other Aggrieved Employees worked and/or pay all hours recorded, PCA has not listed the correct amount of gross wages and net wages earned by Mr. Tincup and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. PCA also has not accurately listed the total hours worked by Mr. Tincup and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9).

In addition, the total regular, overtime, double-time, and on-call hours listed in PCA's wage statements, when added together, do not add up to the total hours worked by the employee during the pertinent time period. Likewise, PCA provides wage statements which do not properly itemize the total hours worked because PCA itemizes the incorrect number of hours work or an undecipherable number of hours worked or both. Without additional information regarding the wage statement and undecipherable codes, an employee cannot simply 'arrive at the sum of hours worked.' Thus, PCA's wage statement do not comply with Labor Code section 226(a)(2).

PCA has knowingly and intentionally failed to properly itemize the regular, overtime, double-time, and on-call rates in effect during each pay period and the corresponding number of hours

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worked, making it impossible to determine the correct pay rate promptly and easily with the corresponding hours and pay. Mr. Tincup's and the Aggrieved Employees' wage statements incorrectly show the regular rate, overtime rate, and/or the doubletime rate and incorrectly show regular rate, overtime rate, and/or the doubletime rate at a different number of hours than worked by the employee during the pay period. Thus, if the employee were to add together the hours listed in the line items for regular, overtime, double-time, and on-call hours, the total is incorrect because it exceeds the total number of hours actually worked by the employee during the pay period. As such, PCA's wage statements do not comply with Labor Code section 226(a)(9) which requires an itemized statement to show "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." The coding on PCA's wage statements cannot be said to clearly engage the employee's use of simple math to understand the rates of pay and total hours worked itemized on the wage statements. PCA's wage statements here have confused and misled Mr. Tincup and the Aggrieved Employees as to what the rates of pay and total hours worked are, a confusion that is compounded by the fact that PCA does not itemize the total hours worked on the wage statements.

Furthermore, because PCA has failed to pay all meal period and rest period premiums to Mr. Tincup and other Aggrieved Employees, PCA has not listed the correct amount of gross wages and net wages earned by Mr. Tincup and other Aggrieved Employees in violation of Sections 226(a)(1) and (5).

Because PCA has failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Mr. Tincup 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, and were given confusing and/or incomplete information about their employer. Instead, Mr. Tincup 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. Tincup requested PCA to produce his employment records pursuant to Section 226(c), which requires an employer to produce records within 21 days and Section 1198.5 which requires an employer to produce records within 30 days. PCA did not comply nor even attempt to comply with this request. Labor Code section 2699.3(c) permits aggrieved employees, including Mr. Tincup, to recover civil penalties for Labor Code sections 226(c) and 1198.5 violations.

Mr. Tincup and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 226(a), 226(c) and 1198.5, pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

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Violation of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11010 Subdivision 7

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, PCA has willfully failed to maintain accurate payroll records for Mr. Tincup and other Aggrieved Employees showing the daily hours they have worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

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 Orders. 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 Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, as well as total daily hours. Cal. Code Regs. tit. 8, § 11010, subd. 7. During the relevant time period, PCA failed, on a company-wide basis, to keep accurate records of shifts and meal period start and stop times and total daily hours for Mr. Tincup and other Aggrieved Employees, in violation of Labor Code section 1174(d) and the applicable Wage Order.

Due to PCA’s failure to maintain accurate payroll and time records, Mr. Tincup and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 201, 202, and 203

Labor Code sections 201-202⁵ 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 their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

PCA has failed to pay Mr. Tincup and other Aggrieved Employees who are no longer employed

⁵ Mr. Tincup also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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by Mr. Tincup all their earned wages at the time of discharge, or within seventy-two hours of their leaving PCA's employment, in violation of Labor Code sections 201-202.

Furthermore, PCA has not paid Mr. Tincup and other Aggrieved Employees who are no longer employed by PCA all their earned wages, at the time of discharge, or within seventy-two hours of their leaving PCA's employment, including, but not limited to, overtime wages, minimum wages, on call wages, vacation pay, and/or meal period and rest period premium wages.

As a result of PCA's violations of Labor Code sections 201-202, Mr. Tincup and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 203 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 1198 and 2810.5(a)(1)

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime; any allowances claimed as part of the minimum wage, including meal or lodging allowances the regular payday designated by the employer; and the name of the employer, including any "doing business as" names used by the employer as well as the employer's physical and mailing address(es) and telephone number. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, PCA failed to provide Mr. Tincup and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). PCA's failure to provide Mr. Tincup and other Aggrieved Employees with written notice of basic information regarding their employment with PCA, such as a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. Mr. Tincup and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Section 432.5

The Labor Code places procedural and substantive limits on employers' abilities to conduct employee background checks and on how employers can use the information they obtain through

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those background checks. The Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, *et seq.* (“ICRAA”), mandates several requirements prior to and following an employee background check, including but not limited to, identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, as well as proper notice of adverse actions taken, among other statutory requirements. A violation of ICRAA results in a violation of Labor Code section 432.5. Under Labor Code section 432.5, “[n]o employer... shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” Mr. Tincup and the Aggrieved Employees have been required by PCA to undergo background checks in violation of California law. Among other things, ICRAA, Civil Code section 1786.16, requires as follows:

(B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:

- (i) An investigative consumer report may be obtained.
 - (ii) The permissible purpose of the report is identified.
 - (iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.
 - (iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.
 - (v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Section 1786.22.
 - (vi) Notifies the consumer of the Internet Web site address of the investigative consumer reporting agency identified in clause (iv), or, if the agency has no Internet Web site address, the telephone number of the agency, where the consumer may find information about the investigative reporting agency's privacy practices, including whether the consumer's personal information will be sent outside the United States or its territories and information that complies with subdivision (d) of Section 1786.20.
- This clause shall become operative on January 1, 2012.

Upon information and belief, PCA has required Mr. Tincup and other Aggrieved Employees to submit to unlawful background checks. Upon information and belief, PCA has required Mr. Tincup and other Aggrieved Employees to agree in writing to unlawful background checks which have failed to abide by the requirements set forth in ICRAA. For example, PCA has not provided Mr. Tincup and the Aggrieved Employees with a separate ICRAA written notice of the intent to obtain a background check report; a notice that is clear, conspicuous, and in writing; a document that consists solely of the disclosure; a notice that states the nature and scope of the information requested pursuant to ICRAA; and a summary of the employee’s rights pursuant to ICRAA.

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By having Mr. Tincup and other Aggrieved Employees sign off on the illegal background checks, PCA has also violated Labor Code section 432.5.

As a result of PCA's violations of Labor Code section 432.5, Mr. Tincup and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Section 432.3

Labor Code section 432.3(b) provides that an employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment.

PCA has asked applicants, including Mr. Tincup and other Aggrieved Employees, salary history information, including compensation as part of the application process in violation of Labor Code section 432.3.

As a result of PCA's violations of Labor Code section 432.3, Mr. Tincup and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Section 2802 and California Code of Regulations Title 8, Section 11010 Subdivision 9

Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their 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 Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). Wage Order No. 1 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." Cal. Code Regs. tit. 8 § 11010, subd. 9(B).

PCA has required Mr. Tincup and other Aggrieved Employees to use their own hand tools or equipment and these hand tools and equipment have been necessary to the performance of Mr. Tincup's and other Aggrieved Employees' jobs. Despite this, PCA has not provided and maintained such hand tools and equipment.

Mr. Tincup and other Aggrieved Employees have incurred necessary business-related expenses and costs that PCA has not fully reimbursed, including but not limited to payments for hand tools and equipment customarily required by Mr. Tincup's and other Aggrieved Employees' trade or craft. Furthermore, PCA has not paid Mr. Tincup and other Aggrieved Employees at least two

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(2) times the minimum wage even though PCA, on a company-wide basis and without reimbursement, has required Mr. Tincup and other Aggrieved Employees to utilize their own hand tools and equipment.

PCA's policy, practice, and/or procedure of passing its operating costs on to Mr. Tincup and other Aggrieved Employees violates Labor Code sections 2800 and 2802 and the applicable wage order. Mr. Tincup and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 15

Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. Labor Code section 1198 further 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."

Wage Order No. 1 provides that:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

Cal. Code Regs. tit. 8 § 11010, subd. 15.

During the relevant time period, Mr. Tincup and other Aggrieved Employees worked in PCA's warehouses producing corrugated materials. The process of producing corrugated materials requires heavy machinery using heat and steam. Oftentimes, the warehouse would reach temperatures as high as 120 degrees. Mr. Tincup was discouraged from taking breaks to cool down during his workday.

PCA's policies, practices, and/or procedures of failing to provide Mr. Tincup and other Aggrieved employees with working conditions that provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed are in violation of California Labor Code section 1198 and the applicable California Code of Regulations. Mr.

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Tincup and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Section 558(a)

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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."⁶ 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." PCA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Tincup's and other Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth herein.

Pursuant to Labor Code section 2699(f) and the other Labor Code sections as set forth above, Mr. Tincup seeks recovery of applicable civil penalties. In the alternative to the penalties above, Mr. Tincup seeks penalties pursuant to Labor Code section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Labor Code sections 558(a)(1) and 558(a)(2) should such provision be applicable.

* * *

Accordingly, Mr. Tincup seeks the remedies set forth above for himself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Mr. Tincup, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other Aggrieved Employees, and the State of California against PCA for violations of California Labor Code sections 201, 202, 203, 223, 226(a), 226.7, 432.3, 432.5, 510, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Wage Orders, as well as sections 225.5, 226(c), 1198.5, 2810.5, which are 'curable' violations pursuant to section 2699.3(c)(2)(A).

Therefore, on behalf of all Aggrieved Employees, Mr. Tincup seeks all applicable civil penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

⁶ Mr. Tincup does not seek to recover any unpaid wages that are provided for in Section 558(a). He only seeks civil penalties allowed by PAGA. *See ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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

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Best Regards,



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