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Superior Court Of California,  
Sacramento  
06/16/2022  
mvalledor  
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.: 34-2022-00318214

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

**FIRST AMENDED 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 Employees  
5 in this county and Labor Code violations occurred throughout California, including in this  
6 county. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60  
7 Cal.App.5th 1069, 1075 (2021) ("Venue is proper in any county in which an aggrieved  
8 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 30, 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, and  
20 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 relevant times, an  
23 employer whose employees are engaged throughout this county and the State of California.

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

28 10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein

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

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

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

#### 18 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

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

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

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

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

23 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in  
25 accordance with the Labor Code; that Plaintiff and Aggrieved Employees were entitled to  
26 payment of one additional hour of pay at their regular rates of compensation when they were not  
27 provided with timely, uninterrupted, thirty-minute meal periods; and that Plaintiff and  
28 Aggrieved Employees were not provided with all meal periods nor payment of one additional

1 hour of pay at their regular rates of compensation when they did not receive a timely,  
2 uninterrupted, thirty-minute meal period.

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

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

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

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

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

26         26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
27 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment of  
28 wages during their employment. In violation of the California Labor Code, Plaintiff and

1 Aggrieved Employees did not receive payment of all wages, including, but not limited to,  
2 overtime wages, minimum wages, vacation pay, sick pay, meal period and rest period premium  
3 wages, within permissible time periods.

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

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

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

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

22 31. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other  
23 Aggrieved Employees have earned additional nondiscretionary compensation, such as, by way  
24 of example, shift differentials. Defendants have failed to properly calculate the correct rate of  
25 pay when paying sick pay. In other words, Defendants have failed to factor in nondiscretionary  
26 compensation for Plaintiff and other Aggrieved Employees and have failed to provide the  
27 appropriate rate of pay when paying sick pay.

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

1 should have known that they had a duty to provide Plaintiff and Aggrieved Employees with  
2 written notice setting forth the amount of paid sick leave available, or paid time off leave an  
3 employer provides in lieu of sick leave, for use on either the employee's itemized wage  
4 statement or in a separate writing provided on the designated payday with the employee's  
5 payment of wages, but failed to do so in violation of the Labor Code.

6 33. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,  
7 Defendants knew or should have known that they had a duty to compensate Plaintiff and  
8 Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay  
9 such compensation, but failed to do so, and falsely represented to Plaintiff and Aggrieved  
10 Employees that they were properly denied wages, all in order to increase Defendants' profits.

11 34. At all relevant times, PAGA provides that any provision of law under the Labor  
12 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and  
13 collected by the Labor and Workforce Development Agency ("LWDA") for violations of the  
14 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by  
15 aggrieved employees in a civil action brought on behalf of themselves and other current or  
16 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

17 35. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any  
18 person who was employed by the alleged violator and against whom one or more of the alleged  
19 violations was committed."

20 36. Plaintiff and other current and former employees of Defendants are "aggrieved  
21 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or  
22 former employees and one or more of the alleged violations were committed against them.

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

- 26 (a) The aggrieved employee or representative shall give written notice by  
27 online filing with the LWDA and by certified mail to the employer of the  
28 specific provisions of the California Labor Code alleged to have been

violated, including the facts and theories to support the alleged violation.

- (b) An aggrieved employee's notice filed with the LWDA pursuant to Section 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

- (a) The aggrieved employee or representative shall give (a) written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to Section 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged

1 violation is cured, including a description of actions taken, and no civil  
2 action pursuant to Section 2699 may commence. If the alleged violation  
3 is not cured within the 33-day period, the aggrieved employee may  
4 commence a civil action pursuant to Section 2699.

5 39. On or about February 7, 2022, Plaintiff provided written notice by online filing to  
6 the LWDA and by Certified Mail to Defendants of the specific provisions of the California  
7 Labor Code alleged to have been violated, including facts and theories to support the alleged  
8 violations, accompanied by the applicable filing fee of seventy-five dollars (\$75). A true and  
9 correct copy of Plaintiff's written notice to the LWDA and Defendants dated February 7, 2022  
10 ("Initial LWDA Notice"), is attached as Exhibit 1.

11 40. On April 12, 2022, Plaintiff provided a supplemental written notice by online  
12 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the  
13 California Labor Code alleged to have been violated, including facts and theories to support the  
14 alleged violations, in accordance with the applicable filing fee of seventy-five dollars (\$75). A  
15 true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated April 12,  
16 2022 ("Supplemental LWDA Notice"), is attached as Exhibit 2.

17 41. As of the filing of this complaint, 65 days have passed since Plaintiff sent the  
18 Initial LWDA Notice and Supplemental LWDA Notice described above to the LWDA, and the  
19 LWDA has not responded that it intends to investigate Plaintiff's claims and Defendants have  
20 not cured the violations.

21 42. Thus, Plaintiff has satisfied the administrative prerequisites under California  
22 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in  
23 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204,  
24 223, 225.5, 226(a), 226.7, 227.3, 233, 246, 248.1, 248.2, 248.5, 510, 512(a), 1174(d), 1182.12,  
25 1194, 1197, 1197.1, 1198, 1198.5, 2800, and 2802, as well as all applicable IWC Wage Orders.

26 43. Defendants, at all relevant times, were employers or persons acting on behalf of  
27 an employer(s) who violated Plaintiff's and Aggrieved Employees' rights by violating various  
28 sections of the California Labor Code as set forth in this complaint.

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

45. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 225.5, 226(a), 226.7, 227.3, 233, 246, 248.1, 248.2, 248.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, and 2802, as well as all applicable IWC Wage Orders.

### FIRST CAUSE OF ACTION

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

**(Against all Defendants)**

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

47. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 233, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 225.5, 246, 248.1, 248.2, 248.5 1182.12, and 1198.5.

48. Defendants' conduct, as alleged in this complaint, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violations of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and

1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;

- (c) Violations of Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with meal periods and/or pay meal period premiums, as set forth below;
- (d) Violations of Labor Code sections 226.7 and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with rest periods and/or pay rest period premiums, as set forth below;
- (e) Violations of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and Aggrieved Employees, as set forth below;
- (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain accurate payroll records, as set forth below;
- (g) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain accurate time records, as set forth below;
- (h) Violations of Labor Code section 204 for failure to timely pay all wages during employment, as set forth below;
- (i) Violations of Labor Code sections 201, 202, and 203, for failure to timely pay all earned wages upon termination, as set forth below;
- (j) Violations of Labor Code sections 2800 and 2802 for failure to reimburse necessary expenditures and losses incurred by Plaintiff and other Aggrieved Employees in the performance of their jobs, as set forth below;
- (k) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide reasonably comfortable work areas to

1 Plaintiff and other Aggrieved Employees consistent with industry-wide  
2 standards, as set forth below;

3 (l) Violations of Labor Code section 227.3 for failure to compensate Plaintiff  
4 and Aggrieved Employees for all vacation pay; and

5 (m) Violations of Labor Code sections 233, 246, 248.1, and 248.2 for failure  
6 to compensate Plaintiff and Aggrieved Employees for all sick pay.

7 **FAILURE TO PAY OVERTIME WAGES IN**

8 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND**

9 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11010 SUBD. 3**

10 49. Labor Code section 1198 makes it illegal to employ an employee under  
11 conditions of labor that are prohibited by the applicable wage order. California Labor Code  
12 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be  
13 the . . . standard conditions of labor for employees. The employment of any employee . . . under  
14 conditions of labor prohibited by the order is unlawful.”

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

19 51. Specifically, the applicable IWC Wage Order provides that Defendants are and  
20 were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a day  
21 or more than forty hours in a workweek, at the rate of time and one-half for all hours worked in  
22 excess of eight hours in a day or more than forty hours in a workweek.

23 52. The applicable Wage Order further provides that Defendants are and were  
24 required to pay Plaintiff and Aggrieved Employees working more than twelve hours in a day,  
25 overtime compensation at a rate of two times their regular rate of pay and required to pay  
26 Plaintiff and Aggrieved Employees at a rate of two times their regular rate of pay for hours  
27 worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

28 53. An employee’s regular rate of pay includes all remuneration for employment

1 paid to, or on behalf of, the employee, including non-discretionary bonuses, incentive pay, and  
2 shift differentials.

3 54. California Labor Code section 510 codifies the right to overtime compensation at  
4 one and one-half times the regular rate of pay for hours worked in excess of eight hours in a day  
5 or forty hours in a week or for the first eight hours worked on the seventh day of work, and to  
6 overtime compensation at twice the employee's regular rate of pay for hours worked in excess  
7 of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

8 55. At all relevant times, Defendants failed to pay all overtime wages owed to  
9 Plaintiff and Aggrieved Employees. During the relevant time period, Plaintiff and other  
10 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in  
11 excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a  
12 week, and/or for the seventh consecutive day of work, sometimes because all hours that they  
13 worked were not recorded, and other times because they were simply not paid for all hours that  
14 were recorded and/or worked. As a result, Plaintiff believes the hours he and other Aggrieved  
15 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff  
16 and other Aggrieved Employees may not have been properly compensated for all hours that  
17 were recorded and/or worked.

18 56. Additionally, Plaintiff and Aggrieved Employees have been subject to  
19 Defendants' control during pre-shift and post-shift times, as well as during unpaid meal periods  
20 resulting in unpaid overtime where they are not getting paid, which, when working overtime  
21 eligible shifts results in underpaid overtime compensation. Based on information and belief, not  
22 all recorded work hours were paid because of rounding practices and/or inaccurate timekeeping  
23 policies and practices. As a result, Plaintiff believes the hours he and other Aggrieved  
24 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff  
25 and other Aggrieved Employees may not have been properly compensated for all hours that  
26 were recorded and/or worked.

27 57. Defendants knew or should have known that, as a result of their policies,  
28 practices and/or procedures, Plaintiff and other Aggrieved Employees were at times performing

1 their assigned duties off-the-clock, were subject to control of Defendants, and/or were suffered  
2 or permitted to perform work for which they were not paid. Defendants also knew, or should  
3 have known, that they did not compensate Plaintiff and other Aggrieved Employees for off-the-  
4 clock work or all hours worked. Because Plaintiff and other Aggrieved Employees sometimes  
5 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven  
6 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other  
7 times, Defendants simply did not pay for all the hours that were recorded. Therefore, Plaintiff  
8 and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they  
9 actually worked. Defendants' failure to pay Plaintiff and other Aggrieved Employees the  
10 balance of overtime compensation, as required by California law, violates the provisions of  
11 California Labor Code sections 510 and 1198 and Wage Order No. 1.

12 58. Plaintiff is informed and believes that Defendants have failed to compensate  
13 Plaintiff and other Aggrieved Employees at the appropriate overtime rate for hours worked in  
14 excess of forty hours worked in a given workweek. Defendants' failure to pay Plaintiff and  
15 other Aggrieved Employees the balance of overtime compensation, as required by California  
16 law, violates the provisions of California Labor Code sections 510 and 1198 and Wage Order  
17 No. 1.

18 59. Plaintiff is further informed and believes, and thereon alleges, that Defendants'  
19 regular rate of pay for calculating overtime wages may not have included all required  
20 remunerations, such as shift differentials, or the correct calculation. During times when Plaintiff  
21 and other Aggrieved Employees worked overtime, Defendants did not pay all overtime wages  
22 by paying a lower overtime rate than required by California law.

23 60. Based on the foregoing, Plaintiff and other Aggrieved Employees are entitled to  
24 recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections  
25 510 and 1198 and Wage Order No. 1, pursuant to Labor Code sections 558, 1194, and/or  
26 2699(a), (f), and (g).

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

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

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

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

64. To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Defendants 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 Wage Order No. 1. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 225.5, 1194, 1197.1 and/or 2699(a), (f), and (g).

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

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

66. At all relevant times, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with a 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 after no more than five hours. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

68. At all relevant times, Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours per day, and if one is not provided, pay an employee one additional hour of pay at the employee's regular rate of compensation, 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 not waived.

69. Plaintiff is informed and believes, and thereon alleges, that Defendants prevented Plaintiff and other Aggrieved Employees from taking all timely, uninterrupted meal periods, including second meal periods, to which they were entitled. As a result of these policies and/or

1 practices, Plaintiff and other Aggrieved Employees continued to perform their assigned duties  
2 without being able to take timely, compliant meal periods. Plaintiff and other Aggrieved  
3 Employees had to work through part or all of their meal periods, had their meal periods  
4 interrupted, and/or had to wait extended periods of time before taking meal periods. Moreover,  
5 Defendants' policies and/or practices of communicating with employees regarding work-related  
6 matters as well as directing employees to continue working and/or return to work during meal  
7 periods resulted in employees not receiving timely, uninterrupted thirty-minute meal periods.

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

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

25 72. Defendants also engaged in a systematic, company-wide policy and/or practice of  
26 not properly training Plaintiff and other Aggrieved Employees on their entitlement to meal  
27 period premium payments resulting from meal period violations. As such, Plaintiff was unaware  
28 of when meal period premiums were owed to him. Accordingly, Plaintiff and other Aggrieved

1 Employees did not receive all meal period premium wages owed when compliant meal periods  
2 were not provided. To the extent that Defendants did pay meal period premium wages to  
3 Aggrieved Employees, such payments were admissions of their failure to provide meal periods.  
4 Based upon information and belief, to the extent employees were paid non-discretionary  
5 compensation such as shift differential, those payments have not been included in Defendants'  
6 regular rate of compensation for calculating meal period premiums and has resulted in an  
7 underpayment of meal period premium wages.

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

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

16 74. At all relevant times, California Labor Code sections 226.7 and 1198, and the  
17 applicable IWC Wage Order have applied to Plaintiff and Aggrieved Employees' employment  
18 by Defendants.

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

25 76. At all relevant times, California Labor Code section 226.7 provides that no  
26 employer shall require an employee to work during any rest period mandated by an applicable  
27 order of the California IWC. To comply with its obligation to provide rest periods under  
28 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must

1 “relinquish any control over how employees spend their break time, and relieve their employees  
2 of all duties — including the obligation that an employee remain on call. A rest period, in short,  
3 must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270  
4 (2016). Pursuant to California Labor Code section 226.7(c) and the applicable IWC Wage  
5 Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one  
6 additional hour of pay at their regular rates of compensation for each workday that a required  
7 rest period was not provided.

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

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

23 79. Defendants have failed to authorize and permit rest periods to Plaintiff and other  
24 Aggrieved Employees. As a matter of policy and practice, Defendants have not provided  
25 Plaintiff and other Aggrieved Employees with net 10-minute rest periods for each day worked  
26 where they are free from Defendants’ required duties and control. For example, Defendants’  
27 placement of time clocks as well as clock-in and clock-out policies and procedures for rest  
28 periods has resulted in Defendants providing rest periods of less than 10 minutes for Plaintiff

1 and Aggrieved Employees. Defendants have subjected Plaintiff and other Aggrieved Employees  
2 to control and demanding duties throughout their workday, even during times which should  
3 constitute uninterrupted duty-free rest periods. Defendants encourage employees to stay  
4 working and/or under employer control, as opposed to encouraging the rest and nourishment  
5 rest periods are designed to provide.

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

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

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

26 82. At all relevant times, Labor Code section 226(a) requires employers to make,  
27 keep and furnish true, accurate, and complete employment records. Defendants have not  
28 provided Plaintiff 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).

83. Defendants have provided Plaintiff and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Defendants violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Defendants did not record all the hours Plaintiff and other Aggrieved Employees worked while off-the-clock and did not pay all hours recorded, Defendants did not list the correct amount of gross wages earned by Plaintiff and other Aggrieved Employees in compliance with Section 226(a)(1). Similarly, Defendants failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees in violation of Section 226(a)(5). Defendants have also failed to accurately list the total hours worked by Plaintiff and other Aggrieved Employees for work performed while on and 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). The total regular and overtime hours listed in Defendants’ wage statements, when added together, do not add up to the total hours worked by the employee during the pertinent time period. Likewise, Defendants provide wage statements which do not properly itemize the total hours worked because Defendants itemize the incorrect total number of hours worked 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, Defendants’ wage statements do not comply with Labor Code section 226(a)(2). Additionally, because Defendants did not calculate other Aggrieved Employees’

regular rate of pay correctly for purposes of paying overtime and/or premium wages, they did not list the correct amount of gross wages and net wages earned by other Aggrieved Employees in compliance with Sections 226(a)(1) and (5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and the correct rates of pay for meal period and rest period premium wages, in violation of Section 226(a)(9). Furthermore, Defendants have failed to properly itemize the regular and overtime rates in effect during each pay period and the corresponding number of hours worked, making it difficult, if not impossible, to determine the correct pay rate promptly and easily with the corresponding hours and pay. Plaintiff's and other Aggrieved Employees' wage statements incorrectly show the regular rate, overtime rate, and incorrectly show regular hours and overtime hours 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 and overtime hours, the total is incorrect because it is different than the total number of hours actually worked by the employee during the pay period. As such, Defendants' wage statements have not complied 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 Defendants' wage statements have not clearly engaged the employee's use of simple math to understand the rates of pay and total hours worked itemized on the wage statements. Defendants' wage statements here have confused and misled Plaintiff 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 Defendants have not itemized the total hours worked on the wage statements. Furthermore, because Defendants have failed to pay all meal period and rest period premiums to Plaintiff and other Aggrieved Employees, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other Aggrieved Employees in violation of Section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees in violation of Section 226(a)(5).

84. Because Defendants have failed to provide, among other things, the accurate

1 number of total hours worked, gross wages earned, net wages earned, and the applicable hourly  
2 rates in effect during the pay period and the corresponding number of hours worked on wage  
3 statements, Plaintiff and other Aggrieved Employees have been prevented from verifying, solely  
4 from information on the wage statements themselves, that they were paid correctly and in full,  
5 and were given confusing and/or incomplete information about their employer. Instead, Plaintiff  
6 and other Aggrieved Employees have had to look to sources outside of the wage statements  
7 themselves and reconstruct time records to determine whether in fact they were paid correctly  
8 and the extent of underpayment.

9 85. Plaintiff and other Aggrieved Employees are therefore entitled to recover  
10 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226(a), 226.3,  
11 1198.5, and/or 2699(a), (f), and (g).

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

15 86. At all relevant times, Labor Code section 1174(d) provides that “[e]very person  
16 employing labor in this state shall ... [k]eep a record showing the names and addresses of all  
17 employees employed and the ages of all minors” and “[k]eep, at a central location in the state or  
18 at the plants or establishments at which employees are employed, payroll records showing the  
19 hours worked daily by and the wages paid to, and the number of piece-rate units earned by and  
20 any applicable piece rate paid to, employees employed at the respective plants or  
21 establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500  
22 civil penalty if they fail to maintain accurate and complete records as required by Section  
23 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),  
24 Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved  
25 Employees showing the daily hours they worked and the wages paid as a result of failing to  
26 record all hours worked and/or failing to correctly list the gross wages and/or net wages earned  
27 by them in violation of Labor Code section 1174(d).

28 87. Labor Code section 1198 provides that the maximum hours of work and the

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

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

19 89. Plaintiff and other Aggrieved Employees are therefore entitled to recover  
20 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or  
21 2699(a), (f), and (g).

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

25 90. At all relevant times, California Labor Code section 1198 provides that the  
26 maximum hours of work and the standard conditions of labor shall be those fixed by the Labor  
27 Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further  
28 provides that “[t]he employment of any employees for longer hours than those fixed by the

1 order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the  
2 applicable IWC Wage Order, employers are required to keep accurate time records showing  
3 when the employee begins and ends each work period and meal period. Cal. Code Regs. Tit. 8,  
4 § 11010(7)(A).

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

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

17 93. Plaintiff and other Aggrieved Employees are therefore entitled to recover  
18 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or  
19 2699(a), (f), and (g).

20 **FAILURE TO PAY WAGES DURING EMPLOYMENT IN**  
21 **VIOLATION OF LABOR CODE SECTION 204**

22 94. At all relevant times, California Labor Code section 204 provides that all wages  
23 earned by any person in any employment between the first and the fifteenth days, inclusive, of  
24 any calendar month, other than those wages due upon termination of an employee, are due and  
25 payable between the sixteenth and the twenty-sixth day of the month during which the labor was  
26 performed.

27 95. At all relevant times, Labor Code section 204 provides that all wages earned by  
28 any person in any employment between the sixteenth and the last day, inclusive, of any calendar

month, other than those wages due upon termination of an employee, are due and payable between the first and the tenth day of the following month.

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

97. At all relevant times, Defendants failed to pay Plaintiff and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, shift differential wages, minimum wages, sick pay and/or meal and rest period premium wages, within any time period specified by Labor Code section 204.

98. At all relevant times, Plaintiff and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

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

99. At all relevant times, 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.

100. 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

1 suspension constituted a termination for which final wages were not paid on the date of  
2 termination. Moreover, on or about September 21, 2021, Defendants sent via overnight mail a  
3 final paycheck for “all wages earned through the date of separation-September 21, 2021, along  
4 with [Plaintiff’s] accrued, unused vacation.” However, Defendants failed to provide Plaintiff  
5 with his accrued vacation pay until approximately September 25, 2021. Although Defendants  
6 may have paid Plaintiff some daily wages for the delay in paying final wages, Defendants failed  
7 to do so on a daily basis from September 9 through and including September 25, 2021, as  
8 required by Labor Code sections 201-203.

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

13 102. Defendants’ failure to pay Plaintiff and Aggrieved Employees who are no longer  
14 employed by Defendants their wages earned and unpaid at the time of discharge, or within 72  
15 hours of their leaving Defendants’ employment, violates Labor Code sections 201, 202, and  
16 203. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties,  
17 attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

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

21 103. At all relevant times, Labor Code sections 2800 and 2802 require employers to  
22 pay for all necessary expenditures and losses incurred by the employee in the performance of  
23 their job. The purpose of Labor Code section 2802 is to prevent employers from passing off the  
24 cost of doing business and operating expenses onto their employees. *Cochran v. Schwan’s*  
25 *Home Serv., Inc.*, 228 Cal.App.4th 1137, 1144 (2014). The applicable wage order, IWC Wage  
26 Order 1-2001, provides that: “[w]hen tools or equipment are required by the employer or are  
27 necessary to the performance of a job, such tools and equipment shall be provided and  
28 maintained by the employer, except that an employee whose wages are at least two (2) times the

1 minimum wage provided herein may be required to provide and maintain hand tools and  
2 equipment customarily required by the trade or craft.” Cal. Code Regs. tit. 8 § 11010, subd.  
3 9(B).

4 104. Defendants, on an organization-wide basis, required Plaintiff and other  
5 Aggrieved Employees to use their own hand tools or other equipment and these hand tools and  
6 other equipment have been necessary to the performance of Plaintiff’s and other Aggrieved  
7 Employees’ jobs. Defendants have not provided and maintained such hand tools and other  
8 equipment.

9 105. As a result of Defendants’ violation of Labor Code section 2802 and the  
10 applicable wage order, Plaintiff and other Aggrieved employees have incurred necessary  
11 business-related expenses and costs that Defendants have not fully reimbursed, including but not  
12 limited to payments for hand tools and equipment customarily required by Plaintiff and other  
13 Aggrieved Employees’ trade or craft.

14 106. Defendants’ policy, practice, and/or procedure of passing operating costs onto  
15 Plaintiff and other Aggrieved Employees violates Labor Code section 2802 and the applicable  
16 wage order, and Plaintiff and other Aggrieved Employees are therefore entitled to recover  
17 penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and  
18 (g).

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

22 107. Labor Code section 1198 provides that no employer may employ an employee  
23 under conditions of labor that are prohibited by the applicable IWC Wage Order. Labor Code  
24 section 1198 further requires that “... the standard conditions of labor fixed by the commission  
25 shall be the ... standard conditions of labor for employees. The employment of any employee ...  
26 under conditions of labor prohibited by the order is unlawful.”  
27  
28

108. 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.

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

110. Defendants' policies, practices, and/or procedures of failing to provide Plaintiff 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 IWC Wage Order.

111. Plaintiff 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).

**FAILURE TO PAY VACATION/PTO PAY AT TERMINATION IN VIOLATION OF  
LABOR CODE SECTION 227.3**

112. Pursuant to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacation, and an employee is terminated without having taken the employee's vested vacation time, all vested vacation time shall be paid to the employee as wages at the employee's final rate of pay in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment

1 contract or employer policy shall not provide for forfeiture of vested vacation time upon  
2 termination.

3 113. In violation of Labor Code section 227.3, Defendants have implemented a policy  
4 and practice that has denied Plaintiff and other Aggrieved Employees of their vacation/PTO pay  
5 at their final rates of pay at termination.

6 114. As a result of Defendants' violations of Labor Code section 227.3, Plaintiff and  
7 other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and  
8 interest pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE SICK PAY**

10 **VIOLATIONS OF LABOR CODE SECTIONS 233, 246, 248.1, 248.2, AND 248.5**

11 115. At all relevant times, under California Labor Code sections 233 and 246,  
12 employers in California must provide employees with paid sick leave at a specified rate of pay  
13 which must factor in additional earnings during a given pay period where such leave is used.

14 116. Under California Labor Code sections 248.1 and 248.2, employers much provide  
15 employees with supplemental sick leave at a specified rate of pay which must factor in  
16 additional earnings during a given pay period where such leave is used.

17 117. During the relevant time period, Plaintiff and Aggrieved Employees have earned  
18 additional nondiscretionary compensation, such as, by way of example, shift differentials or  
19 incentive pay. Upon information and belief, Defendants have failed to provide Plaintiff and  
20 Aggrieved Employees with the appropriate rate of pay when paying sick pay as required under  
21 Labor Code sections 233, 246, 248.1, and 248.2. In other words, upon information and belief,  
22 Defendants have failed to factor in nondiscretionary compensation and have therefore failed to  
23 provide the appropriate rate of pay when paying sick pay as required by Labor Code sections  
24 233, 246, 248.1, and 248.2.

25 118. Furthermore, Defendants have also failed to provide Plaintiff and other  
26 Aggrieved Employees with written notice that sets forth the amount of paid sick leave available  
27 and/or supplemental sick leave, or paid time off leave that Defendants provide in lieu of sick  
28 leave, for use on either Plaintiff's or Aggrieved Employees' itemized wage statements or in

1 separate writings provided on the designated payday with the employees' payments of wages.  
2 Also, supplemental paid sick leave has not been set forth separately from paid sick days.

3 119. As a result of Defendants' violations of Labor Code sections 233, 246, 248.1,  
4 248.2, and 248.5, Plaintiff and Aggrieved Employees are entitled to recover damages, civil  
5 penalties, attorneys' fees and costs, and interest, pursuant to Labor Code section 248.5.

### 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, 227.3, 512(a), and  
19 1198 (by failing to provide all meal periods); 226.7 and 1198 (by failing to provide all rest  
20 periods); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198 and  
21 California Code of Regulations, Title 8, section 11010(7) (by failing to maintain accurate and  
22 complete payroll records); 1198 and California Code of Regulations, Title 8, section 11010(7)  
23 (by failing to maintain accurate and complete time records); 204 (by failing timely to pay all  
24 earned wages during employment); 201, 202 and 203 (by failing timely to pay all earned wages  
25 upon termination); 2802 and California Code of Regulations, Title 8, section 11010(9) (by  
26 failing to reimburse necessary business related expenses); and 1198 and California Code of  
27 Regulations, Title 8, Section 11010 subdivision 15 (by failing to maintain reasonable working  
28 conditions – excessive heat); 227.3 (by failing to pay vacation/PTO pay at termination); and

233, 246, 248.1, 248.2, and 248.5 (by failing to provide all sick pay);

3. For civil penalties pursuant to California Labor Code sections 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223, 225.5, 226(a), 226.7, 227.3, 233, 246, 248.1, 248.2, 248.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and 2802, as well as all applicable IWC Wage Orders;

4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 233, 246, 248.1, 248.2, 248.5, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and 2802;

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

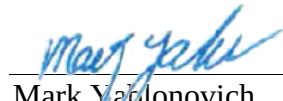
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: June 16, 2022

Respectfully submitted,

Law Offices of Mark Yablonovich

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., Case No. 34-2022-00348214*

LAW OFFICES OF  
**MARK YABLONOVICH**  
9595 WILSHIRE BOULEVARD, SUITE 900  
**BEVERLY HILLS, CALIFORNIA 90212-2511**  
TELEPHONE: (310) 286-0246  
FACSIMILE: (310) 407-5391

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

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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):<sup>1</sup>

**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”),<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.

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

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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,<sup>3</sup> 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,

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<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> 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 201-202<sup>5</sup> 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

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<sup>5</sup> 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."<sup>6</sup> 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.

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<sup>6</sup> 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:

Mark Yablonovich  
Lisa J. Hartlep  
LAW OFFICES OF MARK YABLONOVICH  
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Beverly Hills, California 90212  
(310) 286-0246  
Mark@Yablonovichlaw.com  
Lisa@Yablonovichlaw.com

Best Regards,



Mark Yablonovich

Copy to:      Packaging Corporation of America  
                 1955 W. Field Ct.  
                 Lake Forrest, IL 60045  
                 Via Certified Mail

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

## EXHIBIT 2

*David Tincup v. Packaging Corporation of America, et al., Case No. 34-2022-00348214*

LAW OFFICES OF  
**MARK YABLONOVICH**  
9595 WILSHIRE BOULEVARD, SUITE 900  
BEVERLY HILLS, CALIFORNIA 90212-2511  
TELEPHONE: (310) 286-0246  
FACSIMILE: (310) 407-5391

April 12, 2022

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency  
ATTN: PAGA Administrator  
(<https://dir.tfaforms.net/310>)

Subject: *David Tincup v. Packaging Corporation of America and PCA Central California  
Corrugated, LLC*  
LWDA Case No. LWDA-CM-866952-22  
Supplemental Notice

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 PCA Central California Corrugated, LLC (collectively “PCA”).

This letter is intended to supplement the previously submitted PAGA notice on February 7, 2022, by including and/or supplementing claims for PCA’s violations of California Labor Code sections 204, 227.3, 246, and 248.5. Mr. Tincup’s February 7, 2022 Notice is enclosed with this letter and incorporated by reference.

The employers may be contacted directly:

Packaging Corporation of America  
1 North Field Court  
Lake Forrest, IL 60045

PCA Central California Corrugated, LLC  
1 North Field Court  
Lake Forrest, IL 60045

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

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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 the Aggrieved Employees, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):<sup>1</sup>

### **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

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<sup>1</sup> 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.

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11010 (“Wage Order No. 1”),<sup>2</sup> 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 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

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<sup>2</sup> 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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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. 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,<sup>3</sup> 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

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<sup>3</sup> 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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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, 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. 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

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rest periods.<sup>4</sup>

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 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).

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<sup>4</sup> 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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In addition, the total regular, overtime, and double-time 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, and double-time rates in effect during each pay period and the corresponding number of hours 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, and double-time 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).

In addition, PCA has failed to itemize the amount of paid sick leave/paid time off Mr. Tincup and other Aggrieved Employees have had available every pay period.

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.

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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).

**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).

**Violations of California Labor Code Section 204**

Labor Code section 204 requires that all wages earned by any person in any employment

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between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

During the relevant time period, PCA did not pay Mr. Tincup and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, shift differential wages, minimum wages, sick pay, and/or meal period and rest period premium wages, within the time periods specified by Labor Code section 204.

Mr. Tincup and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

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

Labor Code sections 201-202<sup>5</sup> 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 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, 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).

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

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### **Violations of California Labor Code Section 227.3**

Pursuant to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacations (paid time off also known as “PTO”), and an employee is terminated without having used the employee’s vested vacation/PTO time, all vested vacation/PTO shall be paid to the employee as wages at the employee’s final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation/PTO time upon termination.

On information and belief, PCA has implemented a policy and practice that has denied Mr. Tincup and other Aggrieved Employees of their vacation/PTO pay at their final rates of pay at termination. PCA has failed to pay Mr. Tincup as well as the Aggrieved Employees their vacation pay/PTO at their final rates of pay at termination.

As a result of PCA’s violations of Labor Code section 227.3, 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).

### **Violations of California Labor Code Section 246**

Under Labor Code section 246, employers in California must provide employees with paid sick leave at a specified rate of pay which must factor in additional earnings during a given pay period where such leave is used. Additionally, employers must provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement or in a separate writing provided on the designated pay date with the employee’s payment of wages.

Plaintiff and other Aggrieved Employees have earned additional nondiscretionary compensation, such as, by way of example, shift differentials. Upon information and belief, PCA has failed to provide Plaintiff and other Aggrieved Employees with the appropriate rate of pay when paying sick pay as required under Labor Code section 246. In other words, upon information and belief, PCA has failed to factor in nondiscretionary compensation for Plaintiff and other Aggrieved Employees and has failed to provide the appropriate rate of pay when paying sick pay as required by Labor Code section 246.

Furthermore, PCA has also failed to provide Mr. Tincup and other Aggrieved Employees with written notice that sets forth the amount of paid sick leave available, or paid time off leave PCA provides in lieu of sick leave, for use on either Mr. Tincup’s or other Aggrieved Employees’ itemized wage statements or in separate writings provided on the designated pay dates with the employees’ payments of wages.

As a result of PCA’s violations of Labor Code sections 246 and 248.5, Mr. Tincup and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

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**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 (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.”

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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. 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."<sup>6</sup> Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other

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<sup>6</sup> 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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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.

\* \* \*

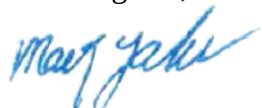
Accordingly, Mr. Tincup seeks the remedies set forth above for himself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Mr. Tincup, acting in the public interest 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, 204, 223, 226(a), 226.7, 227.3, 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), 246, 248.5, and 1198.5, 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.

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:

Mark Yablonovich  
Lisa J. Hartlep  
LAW OFFICES OF MARK YABLONOVICH  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, California 90212  
(310) 286-0246  
Mark@Yablonovichlaw.com  
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Best Regards,



Mark Yablonovich

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Copy to:      Packaging Corporation of America  
                 1955 W. Field Ct.  
                 Lake Forrest, IL 60045  
                 *Via Certified Mail*

PCA Central California Corrugated, LLC  
909 Union St.  
Kingsburg, CA 93631  
*Via Certified Mail*

Packaging Corporation of America  
PCA Central California Corrugated, LLC  
1 North Field Court  
Lake Forrest, IL 60045  
*Via Certified Mail*

CT Corporation System (C0168406)  
330 North Brand Boulevard, Suite 700  
Glendale, CA 91203  
*Agent for service of process for Packaging Corporation of America*  
*PCA Central California Corrugated, LLC*  
*Via Certified Mail*



LAW OFFICES OF  
**MARK YABLONOVICH**  
9595 WILSHIRE BOULEVARD, SUITE 900  
**BEVERLY HILLS, CALIFORNIA 90212-2511**  
TELEPHONE: (310) 286-0246  
FACSIMILE: (310) 407-5391

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

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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):<sup>1</sup>

**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”),<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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,<sup>3</sup> 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,

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<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> 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 201-202<sup>5</sup> 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

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<sup>5</sup> 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."<sup>6</sup> 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.

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<sup>6</sup> 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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