

David P. Myers (SBN 206137)
dmyers@myerslawgroup.com
Jason Hatcher (SBN 285481)
jhatcher@myerslawgroup.com
Andriana N. Bravo (SBN 349191)
abravo@myerslawgroup.com
THE MYERS LAW GROUP, A.P.C.
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (909) 919-2027
Facsimile: (888) 375-2102

Attorneys for Plaintiff Silverio Perez,
and all others similarly situated.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

SILVERIO PEREZ, on behalf of
himself and all others similarly
situated

PLAINTIFF,

v.

ECOLAB PRODUCTION LLC, a
Delaware Limited Liability Company;
and DOES 1 through 100, inclusive

DEFENDANTS.

Case No.: 5:24-cv-01954-SSS (SPx)

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1. Failure to Pay Overtime and
Double Time Wages;**
- 2. Failure to Provide Meal
Periods;**
- 3. Failure to Provide Rest Periods;**
- 4. Failure to Provide Accurate
Wage Statements;**
- 5. Failure to Pay All Wages Due at
Separation;**
- 6. Unfair Competition**
- 7. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

I. INTRODUCTION

This is an action brought by Plaintiff SILVERIO PEREZ (“Plaintiff”), on his
behalf and all others similarly situated, against ECOLAB PRODUCTION LLC, a

Delaware Limited Liability Company, and other as of yet unnamed DOE Defendants 1-100 (hereinafter collectively “Defendants”) alleging, among other things violations of the California Labor Code and Unfair Competition Law. Plaintiff seeks damages, attorneys’ fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges as follows:

II. GENERAL ALLEGATIONS

1. This class action arises from wage and hour violations for, among other things, Defendants’ failure to compensate hourly non-exempt employees in compliance with California law. As more fully described herein, Defendants failed and continue to fail compensate Plaintiff and class members the full amount of wages owed, including overtime and double time, provide meal breaks or meal period premium pay in lieu thereof, provide rest breaks or rest period premium pay in lieu thereof, provide accurate wage statements, and pay all wages due at separation. Additionally, Defendants violated and continue to violate the California Unfair Competition Law.

2. Plaintiff seeks, among other things, all wages, restitutionary disgorgement, and statutory penalties. Plaintiff seeks to represent the following Class:

All current and former California hourly non-exempt employees of Defendants who provided warehouse distribution services for Defendants at any time from four years prior to the filing of this action through the date of class certification. (The “Class”).

3. This Court has jurisdiction because Defendants removed this matter pursuant to the Class Action Fairness Act. Defendants do business in San Bernardino County, out of San Bernardino, California, and Defendants’ obligations and liabilities arise therein.

4. Plaintiff is a former hourly non-exempt employee for Defendants in the state of California and a resident of California.

5. Plaintiff is informed and believes, and thereon alleges that Defendant

1 ECOLAB PRODUCTION LLC, is a Delaware Limited Liability Company.

2 6. The true names and capacities, whether individual, corporate, associate,
3 or otherwise, of DOES 1 through 100 are unknown to Plaintiff, who therefore sues
4 the DOE Defendants by fictitious names. Plaintiff will amend this Complaint to
5 show their true names and capacities when they have been ascertained.

6 7. Plaintiff is informed and believes, and thereon alleges, that each and all
7 of the acts and omissions alleged herein were performed by, and/or are attributable
8 to, all Defendants, each acting as agents and/or employees, and/or under the
9 direction and control of each of the other Defendants, and that said acts and failures
10 to act were within the course and scope of said agency, employment and/or direction
11 and control. Plaintiff is informed and believes, and thereon alleges, that at all times
12 material hereto Defendants were and are the agents of each other.

13 8. Plaintiff is informed and believes, and thereon alleges, that Defendants
14 DOES 1 through 100 are the partners, owners, shareholders, managers, joint
15 employers, or alter egos of Defendants, and were acting on behalf of Defendants in
16 the payment of wages to Plaintiff and the Class.

17 9. At all relevant times alleged herein Plaintiff was employed by
18 Defendants, and Plaintiff performed work for Defendants in San Bernardino County
19 in the state of California.

20 **III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

21 10. Plaintiff and the Class worked as hourly non-exempt employees in the
22 state of California for Defendants.

23 11. Throughout the period of four (4) years prior to the filing of this action
24 through the date of class certification (“Class Period”), Plaintiff and all Class
25 members were and are employees of Defendants in the state of California, entitled
26 to all of the protections afforded to employees under the Labor Code and applicable
27 IWC Wage Order.
28

1 12. Defendants' primary business is to provide cleaning and safety
2 programs, products, equipment, and services to various business industries. This
3 work is accomplished in part by Plaintiff and the Class members.

4 13. During the relevant time period, Plaintiff and the Class members
5 worked in excess of eight (8) hours in a workday and in excess of twelve (12) hours
6 in a workday.

7 14. Defendants are liable to Plaintiff and the Class for failing to pay for all
8 hours worked, including overtime and double time wages at the correct regular rate
9 of pay, failing to provide legally compliant meal and rest periods, failing to provide
10 accurate wage statements, failing to pay all wages owed at separation, and unfair
11 competition.

12 15. Plaintiff is a member of and seeks to be the representative for the Class
13 of similarly situated employees who all have been exposed to, have suffered, and/or
14 were permitted to work under, Defendant's unlawful employment practices as
15 alleged herein.

16 16. Throughout the Class Period, Defendants knowingly and willfully
17 engaged and continue to engage in an unlawful scheme to avoid complying with
18 California wage and hour laws and other employee rights and benefits.

19 17. Throughout the Class Period, Plaintiff and Class members worked in
20 excess of eight (8) hours per workday or forty (40) hours per work week. Defendants
21 failed to pay Plaintiff and Class members one-and-one-half times their regular rate
22 of pay for hours worked in excess of eight (8) hours per day or forty (40) hours per
23 workweek. Defendants also failed to pay Plaintiff and Class members at a rate no
24 less than twice the regular rate of pay for work in excess of twelve (12) hours in one
25 day.

26 18. Throughout the Class Period, Defendants failed to authorize and permit
27 legally compliant meal breaks. Plaintiff and Class members were assigned to and
28 required to work shifts lasting over five (5) hours and were not provided nor allowed

1 to take a thirty (30) minute uninterrupted off-duty meal break without exemption.
2 Plaintiff and Class members were assigned to and required to work shifts lasting
3 over ten (10) hours without a second thirty (30) minute uninterrupted off-duty meal
4 break without a valid exemption. Plaintiff and the Class members were required to
5 carry walkie-talkie communication devices to be on-call during off-duty meal
6 periods.

7 19. Throughout the Class Period, Defendants failed and continue to fail to
8 pay for meal period violations at the correct regular rate of pay.

9 20. Defendants failed to compensate Plaintiff and the Class members for
10 time spent on non-duty free meal periods resulting in unpaid, earned, overtime and
11 double time wages.

12 21. Throughout the Class Period, Defendants failed to authorize and
13 provide paid rest periods compliant with the provisions of the California Labor Code
14 and applicable Wage Order. Plaintiff and Class members were assigned to and
15 required to work shifts lasting over four (4) hours and were not provided nor allowed
16 to take a non-captive paid ten-minute uninterrupted rest break during each four (4)
17 hour work period, or major fraction thereof, at the direction of Defendants and/or
18 with Defendants knowledge and acquiescence. Plaintiff and the Class members
19 were required to carry walkie-talkie communication devices to be on-call during rest
20 periods.

21 22. Throughout the Class Period, Defendants failed and continue to fail to
22 pay for rest period violations at the correct regular rate of pay.

23 23. The wage statements provided by Defendants failed to provide accurate
24 information reflecting the total hours worked, gross and net wages earned for all
25 hours worked per pay period as well as meal and rest period premiums.

26 24. Defendants failed to pay Plaintiff and the Class all earned wages timely
27 upon termination.
28

1 25. The underpayment of wages, Labor Code violations and Wage Order
2 violations upon Plaintiff and the Class are a consequence of Defendants' unlawful
3 policies and practices which were centrally devised, implemented, communicated,
4 and applied to Plaintiff and the Class.

5 26. Because of Defendants' unlawful conduct, Plaintiff and the Class have
6 been and continue to be systematically deprived of their benefits of the Labor Code
7 and applicable IWC Wage Orders, to the detriment of Plaintiff, the Class, and the
8 public at large.

9 **CLASS DEFINITION AND CLASS ALLEGATIONS**

10 27. Plaintiff brings this action on his own behalf and on behalf of all others
11 similarly situated, pursuant to California Code of Civil Procedure §382, and as a
12 member of the Class defined as follows:

13 All current and former California hourly non-exempt employees of
14 Defendants who provided warehouse distribution services for
15 Defendants at any time from four (4) years prior to the filing of this
16 action through the date of class certification. (The "Class").

17 **Sub-Class 1**

18 All current and former California hourly non-exempt employees of
19 Defendants who provided warehouse distribution services for
20 Defendants at any time from four (4) years prior to the filing of this
21 action through the date of class certification who worked at least one
22 (1) shift of more than eight (8) hours in a day or more than forty (40)
23 hours in a week. ("Overtime" Sub-Class)

24 **Sub-Class 2**

25 All current and former California hourly non-exempt employees of
26 Defendants who provided warehouse distribution services for
27 Defendants at any time from four (4) years prior to the filing of this
28 action through the date of class certification and who worked at least
one (1) shift of more than five (5) hours. ("Meal Period" Sub-Class).

Sub-Class 3

All current and former California hourly non-exempt employees of Defendants who provided warehouse distribution services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification and who worked at least one (1) shift of more than ten (10) hours. (“Second Meal Period” Sub-Class).

Sub-Class 4

All current and former California hourly non-exempt employees of Defendants who provided warehouse distribution services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification who worked at least one (1) shift of three and a half (3.5) hours or more. (“Rest Period” Sub-Class).

Sub-Class 5

All current and former California hourly non-exempt employees of Defendants who provided warehouse distribution services for Defendants at any time from one (1) year prior to the filing of this action through the date of class certification who are members of Sub-Class 1 and/or 2 and/or 3 and/or 4. (“Wage Statement Class” Sub-Class).

Sub-Class 6

All former California hourly non-exempt employees of Defendants who provided warehouse distribution services for Defendants at any time from three (3) years prior to the filing of this action through the date of class certification who are members of Sub-Class 1 and/or 2 and/or 3 and/or 4. (“Waiting Time Penalties” Sub-Class).

28. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in response to facts learned through discovery, legal arguments advanced by Defendants or otherwise.

1 29. Further, this action is brought for the benefit of the public, who are
2 entitled to restitution of those funds improperly withheld by Defendants.

3 30. This action has been brought and may be properly maintained as a class
4 action pursuant to the provisions of the Code of Civil Procedure §382 and other
5 applicable law.

6 31. **Numerosity:** Members of the Class are so numerous that their
7 individual joinder is impracticable. It is possible to ascertain the number of former
8 and current employees who are members of the proposed class, but they are so
9 numerous that joinder is impracticable. The proposed Class includes future
10 employees (persons who are hired by defendant within the class period, but who are
11 not now class members as current or former employees) whose joinder is currently
12 impossible. The precise number of Class members and their addresses can be
13 determined by Defendants' business records and will become known to Plaintiff
14 through discovery. Class members may be notified of the pendency of this action by
15 mail, e-mail, the internet, or published and posted notice.

16 32. **Typicality:** Plaintiff's claims are typical of the claims of members of
17 the proposed classes. Defendants employed Plaintiff during the statutory period, and
18 Plaintiff has been subjected to Defendants' unlawful employment practices, as
19 alleged in this Complaint.

20 33. **Adequacy of Class Representative:** Plaintiff will fairly and
21 adequately protect the interests of the classes. Plaintiff's interests do not conflict
22 with Class members' interests, and Plaintiff has retained competent and experienced
23 counsel. The interests of Class members will be fairly and adequately protected by
24 Plaintiff and his counsel.

25 34. **Common Questions of Law and Fact:** Common questions of law and
26 fact exist as to all Class members and predominate over any questions affecting
27 solely individual members of the proposed Class:

28 1) Whether Defendants engaged in a pattern or practice of failing to pay

1 Plaintiff and the members of the Class the full amount of overtime and
2 double-time wages in violation of the applicable Labor Code
3 provisions including §§510 and 1194;

4 2) Whether Defendants improperly retained, appropriated or deprived
5 Plaintiff and members of the proposed Plaintiff class of the use of
6 monies or sums to which they were legally entitled;

7 3) Whether Defendants engaged in unlawful, unfair, and/or fraudulent
8 business practices;

9 4) Whether Defendants, and each of them, was/were participants in the
10 alleged unlawful conduct;

11 5) Whether Defendants engaged in a pattern or practice of failing to
12 provide Plaintiff and the members of the Class meal periods in
13 violation of the applicable Wage Order and Labor Code §§ 226.7, 512
14 by failing to timely provide 30-minute uninterrupted, duty-free, meal
15 periods to Plaintiff and Class members and/or provide the required
16 number of 30-minute uninterrupted, duty-free, meal periods to
17 Plaintiff and Class members;

18 6) Whether Defendants engaged in a pattern or practice of failing to
19 provide Plaintiff and the members of the Class legally compliant, non-
20 captive, duty-free paid rest periods in violation of the applicable Wage
21 Order and Labor Code §§226.7;

22 7) Whether Defendants violated Labor Code §203 by failing to pay all
23 wages due upon separation;

24 8) Whether Defendants engaged in unfair practice and violated California
25 Business and Professions Code §17200 *et seq.*;

26 9) Whether Defendants failed to provide accurate wage statements to
27 Plaintiff and members of the Class; and

28 10) The nature and extent of class-wide injury and measure of

1 damages for the injury.

2 35. **Superiority and Substantial Benefit:** A class action is the superior
3 method for the fair and efficient adjudication of this controversy. Defendants
4 implemented illegal schemes that are generally applicable to the members of the
5 proposed plaintiff class and sub-classes. Damages suffered by each Class member
6 may be relatively small given the burden and expense of individual prosecution of
7 the complex and expensive litigation necessitated by Defendants' conduct. Further,
8 it would be virtually impossible for the Class members to redress the wrongs done
9 to them on an individual basis. Even if Class members could afford such individual
10 litigation, the court system could not. By contrast, the class action device presents
11 far fewer management difficulties, and provides the benefits of a single adjudication,
12 economies of scale, and comprehensive supervision by a single court.

13 36. Plaintiff knows of no difficulty that will be encountered in the
14 management of this litigation that would preclude its maintenance as a class action.
15 Plaintiff is informed and believes, and on that basis alleges, that the amount of
16 money due each Class member as economic damages is ascertainable from
17 Defendants' records or may readily be determined by other means.

18 37. The Classes should also be certified because:

- 19 1) The prosecution of separate actions by individual Class members
20 would create a risk of inconsistent or varying adjudications with
21 respect to individual Class members, which would establish
22 incompatible standards of conduct for Defendants;
- 23 2) The prosecution of separate actions by individual Class members
24 creates the risk of adjudication with respect to them, which would, as
25 a practical matter, be dispositive of the interests of the other Class
26 members not parties to the adjudications, or would substantially impair
27 or impede their ability to protect their interests; and
- 28 3) Defendants have acted or have refused to act on grounds generally

1 applicable to the class and/or the general public, thereby making final
2 and injunctive relief, as well as declaratory relief, with respect to the
3 Class as a whole, appropriate.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME AND DOUBLE TIME WAGES**

6 **Violation of Labor Code §§510 and 1194 and IWC Wage Order No. 5-2001**

7 (Against all Defendants)

8 38. Plaintiff re-alleges and incorporates by reference, as though fully set
9 forth herein, paragraphs 1 through 37 of this Complaint.

10 39. Plaintiff and class members were and are employed and scheduled as a
11 matter of established company policy to work in excess of eight (8) hours per day
12 and/or in excess of forty (40) hours per workweek and/or in excess of twelve (12)
13 hours per day. Defendants employed and scheduled Plaintiff and the class members
14 without providing the full amount of overtime and double time compensation for
15 such excess hours worked in violation of Labor Code §§510 and 1194 and the
16 relevant California Industrial Welfare Commission (IWC) orders.

17 40. Labor Code §510 mandates: “Eight hours of labor constitutes a day's
18 work. Any work in excess of eight hours in one workday and any work in excess of
19 40 hours in any one workweek and the first eight hours worked on the seventh day
20 of work in any one workweek shall be compensated at the rate of no less than one
21 and one-half times the regular rate of pay for an employee. Any work in excess of
22 12 hours in one day shall be compensated at the rate of no less than twice the regular
23 rate of pay for an employee. In addition, any work in excess of eight hours on any
24 seventh day of a workweek shall be compensated at the rate of no less than twice the
25 regular rate of pay of an employee. Nothing in this section requires an employer to
26 combine more than one rate of overtime compensation in order to calculate the
27 amount to be paid to an employee for any hour of overtime work.” The California
28 overtime requirement and wage requirement are non-waivable rights pursuant to LC

1 §219.

2 41. Section 3(a)(1) of Wage Order No. 5-2001 mandates that employers
3 pay one and one-half times the employees' regular rate of pay for employees who
4 work more than eight hours in a day or forty hours in a week and two times their
5 regular rate of pay for any work in excess of twelve hours in one day.

6 42. Labor Code §1194(a) states: "Notwithstanding any agreement to work
7 for a lesser wage, any employee receiving less than the legal minimum wage or the
8 legal overtime compensation applicable to the employee is entitled to recover in a
9 civil action the unpaid balance of the full amount of this minimum wage or overtime
10 compensation, including interest thereon, reasonable attorney's fees, and costs of
11 suit."

12 43. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil
13 action for overtime wages directly against the employer without first filing a claim
14 with the Division of Labor Standards Enforcement ("DLSE") and may recover such
15 wages, together with interest thereon, penalties, attorneys' fees and costs. Further,
16 pursuant to Labor Code §1198, it is unlawful to employ person for longer than the
17 hours set by the IWC or under conditions prohibited by the applicable IWC Wage
18 Orders. IWC Wage Order No. 5, as amended, applies to Plaintiff and the class.

19 44. Defendants have failed and refused to pay Plaintiff and the Class
20 members overtime and double time compensation earned from uncompensated non-
21 duty-free meal periods. Plaintiff is informed and believes and thereon alleges that
22 the obligations and responsibilities of the class employees are irrelevant because
23 Plaintiff and all other similarly situated employees were subjected to Defendants'
24 unlawful pay plans and its failure to pay wages for all hours worked.

25 45. Plaintiff and the Class members consistently were denied
26 uninterrupted, duty-free meal periods, as Plaintiff and the Class Members were
27 required to remain on-call by carrying walkie-talkie communication devices during
28 meal periods, resulting in overtime and double time compensation earned from

uncompensated non-duty-free meal periods.

46. Plaintiff and the class members have been deprived of rightfully earned overtime compensation as a direct and proximate result of Defendants' common policies, practices, and refusal to pay the full amount of compensation earned for all overtime and double time hours worked.

47. Plaintiff and the class are entitled to and seek the full amount of all earned unpaid overtime and double time pay, attorneys' fees and costs, and interest pursuant to LC §1194 in an amount to be determined at trial.

48. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class Members seek recover of pre-judgment interest on all amounts recovered herein.

49. Plaintiff and the class are entitled to and seek attorneys' fees and costs, and interest pursuant to Labor Code §1194 in the amount to be determined at trial.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Violation of Labor Code §§226.7, 512, & Wage Order No. 5-2001

(Against all Defendants)

50. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 37 of this Complaint.

51. Labor Code §226.7 requires an employer to pay one additional hour of compensation, at the regular rate of pay, per day for each meal period the employer fails to provide pursuant to the Labor Code and/or applicable Wage Order. Plaintiff alleges that Defendants failed to provide legally compliant meal periods to Plaintiff and the Class members; in addition to impeding, discouraging, and/or dissuading employees from taking legally compliant meal periods. Plaintiff and the Class Members were required to remain on-call by carrying walkie-talkie communication devices during meal periods. Employees are entitled to a meal period of at least thirty (30) minutes per five (5) hours work period.

1 52. Plaintiff and the Class consistently worked over five (5) or ten (10)
2 hours in a shift without the requisite number of meal periods due to Defendants'
3 policy of discouraging, dissuading and/or impeding Plaintiff and the Class from
4 taking periods. Pursuant to the Code, Plaintiff and the Class were entitled to a meal
5 period of not less than thirty (30) minutes prior to exceeding five (5) hours of
6 employment and a second meal period for hours worked over ten (10) in a day,
7 without a valid waiver.

8 53. Pursuant to Labor Code §512 and the applicable Wage Order,
9 employees are entitled to a meal period of at least thirty (30) minutes per five (5)
10 hour work period. Plaintiff and the Class consistently worked over five (5) hours
11 shifts without meal periods of at least thirty (30) minutes due to Defendants' policy
12 of discouraging, dissuading and/or impeding Plaintiff and the Class from taking at
13 least thirty (30) minute meal periods.

14 54. IWC Wage Order No. 5-2001 applies to Defendants and provides, in
15 pertinent part, that if an employer fails to allow an employee to take meal periods in
16 accordance with the applicable provisions of this Order, the employer shall pay the
17 employee one hour of pay at the employee's regular rate of compensation for each
18 workday that the meal period was not provided.

19 55. During the relevant statutory time period, Defendants failed to
20 authorize and permit timely, duty-free, uninterrupted meal breaks. Plaintiff and
21 Class members were routinely required to work shifts exceeding ten (10) hours
22 without a valid meal period waiver, and without Defendants providing two (2)
23 uninterrupted meal breaks at the direction of Defendants and/or with Defendants'
24 knowledge or acquiescence.

25 56. By their actions in its failure to relieve Plaintiff and the Class members
26 of their duties for off-duty meal periods, Defendants have violated California Labor
27 Code §226.7 and §11 of IWC Wage Order No. 5-2001 and are liable to Plaintiff and
28 the Class.

1 57. Pursuant to Labor Code §226.7, Plaintiff and the Class are entitled to
2 damages in an amount equal to one (1) hour of wages at the regular rate of pay per
3 missed meal break per day, in a sum to be proven at trial.

4 58. Pursuant to Labor Code §218.5, Plaintiff and the Class seek attorneys
5 fees and costs for the non-payment of these wages of one (1) hour of pay at no less
6 than the regular rate of compensation. *Betancourt v. OS Restaurant Services,*
7 *LLC* (2022) 83 Cal.App.5th 132.

8 59. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the
9 Class Members seek recovery of pre-judgment interest on all amounts recovered
10 herein.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PROVIDE REST PERIODS**

13 **Violation of Labor Code §§226.7, 512 & Wage Order 5-2001**

14 (Against all Defendants)

15 60. Plaintiff re-alleges and incorporates by reference, as though fully set
16 forth herein, paragraphs 1 through 37 of this Complaint.

17 61. Labor Code §226.7(b) provides that “An employer shall not require an
18 employee to work during a meal or rest or recovery period mandated pursuant to an
19 applicable statute, or applicable regulation, standard, or order of the Industrial
20 Welfare Commission, the Occupational Safety and Health Standards Board, or the
21 Division of Occupational Safety and Health.”

22 62. Labor Code §516 provides that the Industrial Welfare Commission
23 “may adopt or amend working condition orders with respect to break periods, meal
24 periods, and days of rest for any workers in California consistent with the health and
25 welfare of those workers.”

26 63. IWC Wage Order No. 5-2001 provides, in pertinent part, that if an
27 employer fails to allow an employee to take rest periods in accordance with the
28 applicable provisions of this Order, the employer shall pay the employee one hour

1 of pay at the employee's regular rate of compensation for each workday that a rest
2 period was not provided. The authorized rest period is based on the total hours
3 worked daily at the rate of ten minutes net rest time per four hours or major fraction
4 thereof.

5 64. Section §12 of the IWC Wage Order No. 5-2001 states: "Every
6 employer shall authorize and permit all employees to take rest periods, which insofar
7 as practicable shall be in the middle of each work period. The authorized rest period
8 time shall be based on the total hours worked daily at the rate of ten (10) minutes net
9 rest time per four (4) hours or major fraction thereof. However, a rest period need
10 not be authorized for employees whose total daily work time is less than three and
11 one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked
12 for which there shall be no deduction from wages."

13 65. Defendants, and each of them, failed and/or refused to implement a
14 relief system by which Plaintiff and the Class members could receive paid non-
15 captive, ten (10) minute rest breaks and/or work free of interruption for every four
16 (4) hours worked, or major fraction thereof. By and through their actions,
17 Defendants intentionally and improperly denied rest periods to the Plaintiff and
18 Class members in violation of Labor Code §§226.7 and 512.

19 66. During the relevant time period, Defendants failed to authorize and
20 permit non-captive, rest breaks and the Class members, including Plaintiff, were
21 routinely required to work through or without rest breaks at the direction of
22 Defendants and/or with Defendants knowledge or acquiescence. Plaintiff and the
23 Class Members were required to remain on-call by carrying walkie-talkie
24 communication devices during rest periods.

25 67. Labor Code §226.7(b) and Section 12(B) of the Wage Order require an
26 employer to pay one additional hour of compensation, at the regular rate of pay, per
27 day for each rest period the employer failed to provide pursuant to the Labor Code
28 and/or applicable Wage Order.

1 68. Plaintiff and the Class members worked over six (6) hours per shift
2 and/or over ten (10) hours per shift.

3 69. Plaintiff and the Class members were entitled to a non-captive, duty-
4 free, paid rest period of not less than ten (10) minutes for every four hours worked
5 or major fraction thereof, or premium pay remedy of one hours pay at the regular
6 rate of pay for each day in lieu of the same.

7 70. During the relevant time period, Defendants failed to provide legally
8 compliant non-duty free ten (10) minute paid rest periods to Plaintiff and the Class
9 members and/or Defendants failed to provide the requisite premium pay remedy for
10 non-compliant and/or missed rest periods.

11 71. As such, as a matter of Defendants' established company policy,
12 Defendants failed to authorize and permit all required paid rest periods established
13 by Labor Code §§226.7 and 516 and Section 12 of the applicable Wage Order.

14 72. As a result of the unlawful acts of Defendants, Plaintiff and the Class
15 members have been deprived of legally compliant paid rest breaks and are entitled
16 to recover damages under Labor Code §226.7(b) and §12 of IWC Wage Order No.
17 16-2001 in the amount of one additional hour of compensation at their regular rate
18 of pay for each day a paid rest break was not provided.

19 73. Pursuant to Labor Code §218.5, Plaintiff and the Class seek attorney
20 fees and costs for the non-payment of these wages of one (1) hour of pay at no less
21 than the regular rate of compensation. *Betancourt v. OS Restaurant Services,*
22 *LLC* (2022) 83 Cal.App.5th 132.

23 74. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the
24 Class Members seek recovery of pre-judgment interest on all amounts recovered
25 herein.

26 **FOURTH CAUSE OF ACTION**

27 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

28 **Violation of Labor Code §226**

(Against all Defendants)

75. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 37 of this Complaint.

76. California Labor Code §226 provides:

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

77. Section 7(A) of the Wage Order requires accurate information pertaining to total wages paid each payroll period, total hours worked in the payroll period and applicable rates of pay, and incentive plan formula provided to the employees.

78. Labor Code §226(e) provides that an employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226 occurs and one hundred dollars (\$100) for each subsequent pay period not to exceed an aggregate penalty of four thousand dollars (\$4,000), as well as an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide timely and accurate itemized

1 statements to the employees.

2 79. Plaintiff and the Class members suffered injury as a result of
3 Defendants' knowing and intentional failure to provide accurate itemized wage
4 statements as Plaintiff and the Class member were owed but not paid overtime
5 compensation for all hours worked, and premium payments for rest and meal period
6 violations which were not reflected on the wage statements. Plaintiff and the Class
7 members suffered injury as a reasonable person could not promptly and easily
8 determine from the wage statements alone the accurate amount of gross wages, the
9 net wages earned for the pay period, and the applicable hourly rates at the
10 corresponding hours worked.

11 80. At all material times, Defendants knowingly and intentionally failed to
12 provide Plaintiff and Class Members with accurate wage statements reflecting the
13 gross wages earned, net wages earned, and/or meal and rest period premium
14 payments on the wage statement.

15 81. Plaintiff and the Class members are entitled to the greater of actual
16 damages or statutory penalties pursuant to Labor Code §226(e) for these violations,
17 in an amount to be determined at trial.

18 82. Plaintiff and the Class members are entitled to and seek costs and
19 reasonable attorneys' fees pursuant to Labor Code §226(e).

20 83. Plaintiff further seeks injunctive relief and reasonable attorneys' fees
21 and costs pursuant to Labor Code §226(h).

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

24 **Violation of Labor Code §§201, 203**

25 (Against all Defendants)

26 84. Plaintiff re-alleges and incorporates by reference, as though fully set
27 forth herein, paragraphs 1 through 37 of this Complaint.

28 85. Plaintiff and the Class members whose employment ended with

1 Defendants during the relevant time period were entitled to be promptly paid all
2 earned and unpaid wages at the time of termination, as required pursuant to Labor
3 Code §§201 and 202, *et seq.* Defendants refused and/or intentionally failed to
4 promptly compensate Plaintiff and the other Class members all earned overtime
5 wages, rest period premium pay and/or meal period premium pay. Based on this
6 Plaintiff and the Class members seek and are entitled to damages in the form of
7 statutory waiting time penalties pursuant to LC §203.

8 86. Plaintiff and the Class members whose employment terminated during
9 the relevant time period were employees of Defendants covered by Labor Code
10 §203.

11 87. Accordingly, pursuant to Labor Code §203, Plaintiff and the Class
12 members are entitled to waiting time penalties at an amount to be proven at trial.

13 **SIXTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **Violation of Business and Professions Code §§17200, *et seq.***

16 (Against all Defendants)

17 88. Plaintiff and the class re-allege and incorporate by reference and re-
18 allege each and every one of the allegations contained in the preceding and foregoing
19 paragraphs of this Complaint as if fully set forth herein.

20 89. Beginning on an exact date unknown to Plaintiff but believed to have
21 occurred at least since four (4) years before the filing of this action, Defendants have
22 engaged in a pattern and practice of acts of unfair competition in violation of B&PC
23 §17200, including the practices alleged herein.

24 90. Defendants, and each of them, are “persons” as defined by Business
25 and Professions Code §17201.

26 91. Plaintiff seeks to enforce important rights affecting the public interest.
27 Plaintiff sues on his own behalf and on behalf of the current, former, and future
28 employees of the Defendants that were denied overtime pay and required to work

1 shifts without legally compliant meal and/or rest breaks periods, due to Defendants'
2 unfair business practices.

3 92. Plaintiff and the Class have suffered injuries-in-fact and have lost
4 money as a result of the Defendants' unfair competition alleged herein.

5 93. Defendants have previously or continue to engage in unlawful, unfair,
6 and/or fraudulent business practices, as alleged in this Complaint, in violation of
7 California's B&PC §17200 *et seq.* by:

- 8 a. Failing and refusing to pay the class, including Plaintiff, earned
9 overtime and double time wages in violation of Labor Code §§510,
10 1194 and the IWC Wage Order 5-2001;
- 11 b. Failing and refusing to provide Plaintiff and the Class members legally
12 compliant, uninterrupted, timely meal breaks or premium payments, at
13 the regular rate of pay, for said violations in violation of Labor Code
14 §§226.7, 512 and IWC Wage Order No. 5-2001;
- 15 c. Failing and refusing to provide Plaintiff and the Class members legally
16 compliant non-captive, duty-free, paid, ten-minute rest periods or
17 premium payments, at the regular rate of pay, for said violations in
18 violation of Labor Code §§226.7, 512 and IWC Wage Order No. 5-
19 2001;

20 94. All of these allegations constitute unfair business practices and/or
21 unlawful business practices in violation of California B&PC §17200, *et seq.*

22 95. Defendants have avoided payment of wages, overtime and double time
23 wages and other benefits as required by the California Labor Code, the California
24 Code of Regulations and applicable IWC Wage Orders. As a result of Defendants'
25 unfair business practices, Defendants have reaped unfair benefits and illegal profits
26 at the expense of Plaintiff, the Class members, and others similarly situated, and the
27 members of the public. Defendants should be made to disgorge their ill-gotten gains
28 and to restore them to the Class, including Plaintiff.

1 96. Plaintiff and the Class members seek full restitution of said monies, as
2 necessary and according to proof, to restore any and all monies withheld and/or
3 acquired by Defendants by means of the unfair, unlawful, and fraudulent business
4 practices complained of herein. Plaintiff seeks, on behalf of all current and former
5 employees of Defendants, restitution of monies retained by Defendants. Plaintiff
6 further seeks on behalf of himself and the Class members, the appointment of a
7 receiver, as necessary, to establish the total restitutionary relief from Defendants.
8 The restitution includes all wages withheld by Defendants as a result of the unfair,
9 unlawful, and/or fraudulent business practices; including interest thereon. Absent a
10 statutory provision specifically governing the type of claim at issue, the prejudgment
11 interest rate is 10 percent. The acts complained of herein occurred, at least in part,
12 within the last four (4) years preceding the filing of the Complaint.

13 97. Plaintiff is informed and believes and thereon alleges that at all times
14 herein mentioned, Defendants have engaged in unlawful, deceptive, and unfair
15 business practices prohibited by California B&PC §17200, thereby depriving their
16 employees and the Class members, the minimum working condition, standards and
17 conditions due to them under the California labor laws and Industrial Welfare
18 commission wage orders as specifically described herein. Plaintiff further seeks an
19 order requiring Defendants to identify by full name, telephone number, and last
20 known address employees who worked or still work for Defendants for the Class
21 members from four (4) years preceding the filing of the original Complaint through
22 the date of class certification. Plaintiff further seeks an order requiring Defendants
23 to timely pay restitution to all current and former employees, including back wages,
24 and interest.

25 98. By and through its unfair, unlawful, and/or fraudulent business
26 practices and acts described herein, Defendants have obtained valuable services
27 from Plaintiff and all persons similarly situated, and has deprived Plaintiff and all
28 persons similarly situated of valuable rights and benefits guaranteed by law, all to

1 their detriment.

2 99. Plaintiff, and all persons similarly situated, and all persons in interest,
3 are entitled to and do seek such relief as may be necessary to restore to them the
4 money and property which Defendants have acquired, or of which Plaintiff and class
5 members have been deprived by mean of the herein described unfair, unlawful,
6 and/or fraudulent business practices.

7 100. Plaintiff, and all persons similarly situated, and all persons in interest,
8 are further entitled to and do seek a declaration that the above-described business
9 practices are unfair, unlawful, and/or fraudulent, and declaratory relief of
10 Defendants engaging in any of the herein described unfair, unlawful, and/or
11 fraudulent business practices.

12 101. Plaintiff and the Class members request attorney's fees and costs
13 pursuant to Code of Civil Procedure §1021.5 since this action is brought to vindicate
14 important rights of a large class and the public.

15 **SEVENTH CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **Violation of Labor Code §§ 2698, *et seq.***

18 (Against all Defendants)

19 102. Plaintiff on behalf of himself and on behalf of all other aggrieved
20 employees herein re-alleges and incorporates each and every one of the allegations
21 in the preceding paragraphs as if fully set forth herein.

22 103. Labor Code §§2698-2699, the Labor Code Private Attorney General
23 Act of 2004, provides for a civil penalty to be assessed and collected by the Labor
24 and Workforce Development Agency (LWDA), or any of its departments, divisions,
25 commissions, boards, agencies or employees for a violation of the Labor Code, may
26 be recovered through a civil action by an aggrieved employee on behalf of himself
27 or herself, and collectively on behalf of all other current or former employees.

28 104. Whenever the LWDA, or any of its departments, divisions,

1 commissions, boards, agencies or employees, has discretion to assess a civil penalty,
2 a court in a civil action is authorized to exercise the same discretion, subject to the
3 same limitations and conditions to assess a civil penalty.

4 105. Plaintiff and Defendants' non-exempt hourly employees who did/do
5 work as warehouse distribution employees are "aggrieved employees" as defined by
6 Labor Code §2699, in that they are all current or former employees of Defendants,
7 and one or more of the alleged violations was committed against them.

8 106. Plaintiff gave written notice electronically to the LWDA, and by
9 certified mail to Defendants of the specific provisions of this code alleged to have
10 been violated, including the facts and theories to support the alleged violations as
11 required by Labor Code §2699.3. More than 65 days have lapsed since notice to the
12 LWDA and the LWDA has not indicated that it intends to investigate Defendants'
13 Labor Code violations. Accordingly, Plaintiff may commence a civil action to
14 recover civil penalties for himself and other current and former employees under
15 Labor Code §2699 pursuant to §2699.3.

16 107. Plaintiff asserts all the claims in this Complaint against Defendants,
17 individually and on behalf of all aggrieved employees in their capacity as private
18 attorney general and seeks all applicable civil penalties available under the Labor
19 Code.

20 108. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of
21 all aggrieved employees, requests and seeks to recover from the Defendants for:
22 unpaid overtime and double time wages, meal and rest period violations, wage
23 statement violations, and waiting time penalties according to proof. Plaintiff is
24 further entitled to attorneys' fees and costs pursuant to Labor Code §2699(g)(1), as
25 well as all civil penalties, including, but not limited to:

- 26 1) Penalties under Code of Regulations, Title 8 §11050 in the amount of
27 \$50 for each aggrieved employee per pay period for the initial
28 violation, and \$100 for each aggrieved employee per pay period for

1 each subsequent violation;

2 2) Penalties under Labor Code §558, in addition to and entirely
3 independent and apart from other penalties provided under the Labor
4 Code, in the amount of \$50 for each underpaid aggrieved employee for
5 each pay period the aggrieved employee was underpaid in addition to
6 an amount sufficient to recover underpaid wages, and \$100 for each
7 subsequent violation for each underpaid employee for each pay period
8 for which the employee was underpaid in addition to an amount
9 sufficient to recover underpaid wages, with all wages recovered
10 pursuant to Labor Code §558 provided to the affected employees;

11 3) Penalties under Labor Code §2699(f), in addition to and entirely
12 independent and apart from other penalties provided in the Labor Code
13 and for Labor Code violations without a specific civil penalty, in the
14 amount of \$100 for each aggrieved employee per pay period for each
15 violation, and \$200 for each aggrieved employee per pay period for
16 each subsequent violation.

17 109. Any and all additional civil penalties and sums as provided by the Labor
18 Code and/or other statutes.

19 110. Plaintiff seeks and is entitled to have 75% of all penalties obtained be
20 allocated to the LWDA and 25% to aggrieved employees.

21 111. Further, Plaintiff is entitled to seek and recover reasonable attorney's
22 fees and costs pursuant to Labor Code §§2699(g)(1).

23 **IV. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment as follows:

- 25 1. An order that the action be certified as a class action;
- 26 2. An order that Plaintiff be appointed class representative;
- 27 3. An order that counsel for Plaintiff be appointed class counsel;
- 28 4. An order requiring Defendants to identify, by name, email address, address

1 and telephone number all current and former California hourly non-exempt
2 employees of Defendants who provided warehouse distribution services
3 for Defendants at any time from four (4) years prior to the filing of this
4 action through the date of class certification;

5 5. For all unpaid wages due to Plaintiff and each Class member and liquidated
6 damages, in amounts to be proven at trial;

7 6. For restitution of all unpaid wages due Plaintiff and each Class member;

8 7. For the full amount of unpaid overtime and double time wages due to
9 Plaintiff and each class member pursuant to Labor Code §1194;

10 8. For recovery as authorized by Labor Code §226(e);

11 9. For all applicable statutory penalties, in amounts to be proven at trial;

12 10. For all applicable civil penalties, in amounts to be proven at trial;

13 11. For an award of waiting time penalties pursuant to section 203 of the
14 California Labor Code, in amounts to be proven at trial;

15 12. For general damages including compensatory damages according to proof;

16 13. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a)
17 and Cal. Civil Code §3287 and to the extent permitted by law, the
18 California Constitution, and/or deemed equitable by the Court;

19 14. For all applicable interest on damages, wages, expenses, and penalties due;

20 15. For injunctive relief to prevent further violations of the California Labor
21 Code;

22 16. For declaratory relief that Defendants engaged in unfair practices;

23 17. For declaratory relief that Defendants violated Labor Code §§ 201-203,
24 226, 226.7, 510, 512, and 1194;

25 18. For restitution of all moneys due to Plaintiffs and Class members, and
26 disgorged profits from the unlawful and/or unfair business practices of
27 Defendants, pursuant to California Business & Professions Code §17200;

28 19. For one (1) hour of pay at each of the employees' regular rate of

1 compensation for each workday that a legally compliant meal break was
2 not provided, impeded, discouraged, and/or dissuaded;

3 20. For one (1) hour of pay at each of the employees' regular rate of
4 compensation for each workday that a legally compliant rest break was not
5 provided, impeded, discouraged, and/or dissuaded;

6 21. For costs of suit, expenses and attorneys' fees pursuant to Labor Code
7 §§226(e) and (h), 218.5, 1194(a), 2699(g)(1), Code of Civil Procedure
8 §1021.5, *et seq.*, and all other applicable law;

9 22. On behalf of Plaintiff and all other aggrieved employees and the LWDA,
10 for all civil penalties authorized by LC §2699, including but not limited to:

11 a. For civil penalties pursuant to LC §558 as follows:

12 i. For any initial violation, fifty dollars (\$50) for each underpaid
13 employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover
15 underpaid wages;

16 ii. For each subsequent violation, one hundred dollars (\$100) for
17 each underpaid employee for each pay period for which the
18 employee was underpaid in addition to an amount sufficient
19 to recover underpaid wages;

20 b. For civil penalties per Code of Regulations, Title 8 §11050 in the
21 amount of \$50 for each aggrieved employee per pay period for the
22 initial violation, and \$100 for each aggrieved employee per pay
23 period for each subsequent violation;

24 c. For civil penalties under LC §2699(f), in addition to and entirely
25 independent and apart from other penalties provided in the Labor
26 Code and for Labor Code violations without a specific civil penalty,
27 in the amount of \$100 for each aggrieved employee per pay period
28 for each violation, and \$200 for each aggrieved employee per pay

1 period for each subsequent violation, and;

2 23. For all such other and further relief that the Court may deem just and
3 proper.

4
5 **THE MYERS LAW GROUP, A.P.C.**

6 Date: 10/22/24

7 By: /s/ Andriana N. Bravo

8 David P. Myers,

9 Jason Hatcher,

10 Andriana N. Bravo

11 Attorneys for Plaintiff and all others
12 similarly situated
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