

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

PERFORMANCE FOOD GROUP, INC., a Colorado corporation; and
DOES 1 through 50, Inclusive;

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

MARCOS RODRIGUEZ, an individual, in his representative capacity on
behalf of the State of California and fellow Aggrieved Employees,

ELECTRONICALLY FILED
Superior Court of California
County of Alameda

11/08/2022

Chad Finke, Executive Officer / Clerk of the Court

By: X. Bowie Deputy

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda Superior Court - Hayward Hall of Justice
24405 Amador Street
Hayward, CA 94544

CASE NUMBER:

(Número del Caso): **22CV021320**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (858) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:

(Fecha) **11/08/2022**

Clerk, by

X. Bowie

, Deputy

Chad Finke, Executive Officer / Clerk of the Court

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

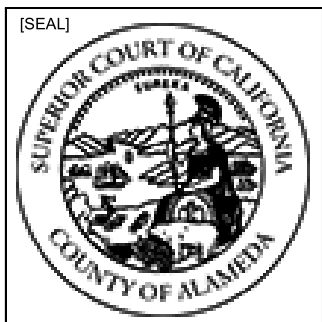
☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):



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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARCOS RODRIGUEZ, an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiffs,

vs.

PERFORMANCE FOOD GROUP, INC., a
Colorado corporation; and DOES 1 through 50,
Inclusive;

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

11/08/2022 at 10:37:26 AM

By: Xian-xii Bowie,
Deputy Clerk

Case No. **22CV021320**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET SEQ.*

DEMAND FOR JURY TRIAL

1 Plaintiff MARCOS RODRIGUEZ (“PLAINTIFF”) an individual, in his representative
2 capacity on behalf of himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against PERFORMANCE FOOD GROUP, INC. (hereinafter
4 collectively referred to as “DEFENDANT” and/or “DEFENDANTS”), alleges on information and
5 belief, except for his own acts and knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
9 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour
10 violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
12 their employment-related costs by systematically violating California wage and hour laws.

13 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to maintain true and accurate records;
- 19 e. Failure to provide accurate itemized wage statements;
- 20 f. Failure to timely pay wages due during, and upon termination of employment; and,
- 21 g. Failure to reimburse for required business expenses.

22 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of himself
23 and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid
24 wages permitted pursuant to California Labor Code § 2699, *et seq.*

25 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
26 California.

27 **THE PARTIES**

1 6. Defendant PERFORMANCE FOOD GROUP, INC. (“DEFENDANT” and/or
2 “DEFENDANTS”) is a Colorado corporation that at all relevant times mentioned herein conducted and
3 continues to conduct substantial and regular business in the state of California, county of Alameda, and
4 is a major distributor of food products.

5 7. PLAINTIFF has been employed by DEFENDANT in California since August of 2021 and
6 has at all times been classified by DEFENDANT as a non-exempt employee, paid on an hourly basis,
7 and entitled to the legally required meal and rest periods and payment of minimum and overtime wages
8 due for all time worked.

9 8. PLAINTIFF brings this action in his representative capacity on behalf of the State of
10 California and on behalf of all persons who are or previously were employed by DEFENDANT and
11 classified as non-exempt employees (hereinafter “AGGRIEVED EMPLOYEES”) between September
12 1, 2021 and the present (“PAGA PERIOD”).

13 9. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
14 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code
15 violations committed by DEFENDANT.

16 10. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
17 were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
18 applicable Industrial Welfare Commission Wage Order.

19 11. Each of the fictitiously named defendants participated in the acts alleged in this
20 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
21 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
22 the true names and capacities of these fictitiously named defendants when their true names are
23 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
24 defendants have participated in the acts alleged in this Complaint.

25 12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
26 “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s
27 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,
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1 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
2 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
3 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

4 13. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of PLAINTIFF's
5 employer either individually or as an officer, agent, or employee of another person, within the meaning
6 of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than
7 the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid
8 employee.

9 **JOINT EMPLOYER**

10 14. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to enforce
11 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

12 15. Section 558 of the California Labor Code provides that "any employer *or other person*
13 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
15 be subject to a civil penalty..." (*Lab. Code* § 558(a).);

16 16. Section 1197.1 of the Labor Code provides that "[a]ny employer *or other person* acting
17 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
18 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
19 of the commission shall be subject to a civil penalty..." (*Lab. Code* § 1197.1(a).)

20 17. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
21 a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's
22 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
23 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
24 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
25 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

26 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT, and each
27 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
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1 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
2 damages alleged herein.

3 19. At all relevant times, each Defendant, whether named or fictitious, was the agent,
4 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
5 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
6 of the other.

7 20. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's
8 wages, working hours, and/or working conditions.

9 21. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action
10 as the agent of the other DEFENDANT, carried out a joint scheme, business plan or policy, and the
11 acts of each Defendant are legally attributable to the other DEFENDANT.

12 **JURISDICTION AND VENUE**

13 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
15 has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General
16 Act of 2004, California Labor Code §2698, *et seq.*

17 23. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
18 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides in this County,
19 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in
20 this County and/or conducts substantial business in this County, and (ii) committed the wrongful
21 conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

22 **THE CONDUCT**

23 24. In violation of the applicable sections of the California Labor Code and the requirements
24 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
25 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
26 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the
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1 other AGGRIEVED EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-
2 clock work, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES overtime at the
3 correct regular rate of pay, failed to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES
4 meal rest premiums at the regular rate, and failed to issue to PLAINTIFF and the AGGRIEVED
5 EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable
6 hourly rates in effect during the pay periods and the corresponding amount of time worked at each
7 hourly rate. DEFENDANT's uniform policies and practices are intended to purposefully avoid the
8 accurate and full payment for all time worked as required by California law which allows
9 DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the
10 law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
11 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

12 **A. Meal Period Violations**

13 25. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
15 time during which an employee is subject to the control of an employer, including all the time the
16 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
17 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
18 for all the time they were under DEFENDANT's control. Specifically, as a result of PLAINTIFF's
19 demanding work requirements and DEFENDANT'S understaffing, DEFENDANT required
20 PLAINTIFF to work during what was supposed to be PLAINTIFF's off-duty meal break. Indeed,
21 there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
22 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by
23 regularly working without their time being accurately recorded and without compensation at the
24 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to
25 pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
26 DEFENDANT's business records.

1 26. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
2 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal
4 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT for
6 more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT
7 from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-
8 duty meal period for some workdays in which DEFENDANT required these employees to work ten
9 (10) hours of work from time to time. The nature of the work performed by PLAINTIFF and other
10 AGGRIEVED EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal
11 period exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were, from time to time, required to remain on duty and on call. PLAINTIFF and other
13 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in
14 accordance with DEFENDANT's strict corporate policy and practice.

15 **B. Rest Period Violations**

16 27. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
17 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
18 provided ten (10) minute rest periods as a result of their rigorous work requirements and
19 DEFENDANT's inadequate staffing. Further, for the same reasons these employees were denied their
20 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
21 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
22 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at
23 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they
24 were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time
25 to time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED
26 EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous
27 work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other AGGRIEVED
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1 EMPLOYEES were from time to time denied their proper rest periods by DEFENDANT and
2 DEFENDANT's managers.

3 **C. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
4 **Sick Pay**

5 28. From time-to-time during the PAGA PERIOD, DEFENDANT failed and continue to fail
6 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
7 overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result,
8 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working
9 overtime without compensation at the correct overtime and double time rates, meal and rest period
10 premiums, and sick pay rates. DEFENDANT's uniform policy and practice to not pay the
11 AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and rest
12 period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANT's
13 business records.

14 29. State law provides that employees must be paid overtime at one-and-one-half times their
15 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
16 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

17 30. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
18 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
19 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
20 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
21 compensation when the employees met the various performance goals set by DEFENDANTS.

22 31. However, from time-to-time, when calculating the regular rate of pay, in those pay
23 periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time,
24 paid meal and rest period premium payments, and/or sick pay, and earned this non-discretionary bonus
25 or incentive, DEFENDANTS failed to accurately include the non-discretionary bonus compensation
26 and/or incentive and/or shift differential paid as part of the employees' "regular rate of pay" and/or
27 calculated all hours worked rather than just all non-overtime hours worked. Management and
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1 supervisors described the incentive/bonus program to potential and new employees as part of the
2 compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and
3 other AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.” The failure to do
4 so has resulting in a systematic underpayment of overtime and double time compensation, meal and
5 rest period premiums, and redeemed sick pay to PLAINTIFF and AGGRIEVED EMPLOYEES by
6 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for
7 non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in
8 which the non-exempt employee uses paid sick time, whether or not the employee actually works
9 overtime in that workweek. DEFENDANT’s conduct, as articulated herein, by failing to include the
10 incentive compensation as part of the “regular rate of pay” for purposes of sick pay compensation was
11 in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Lab. Code
12 Sections 201, 202, 203, and/or 204.

13 32. In violation of the applicable sections of the California Labor Code and the requirements
14 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
15 policy, practice, and procedure, intentionally and knowingly failed to compensate PLAINTIFF and
16 the other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and double time
17 worked, meal and rest period premiums, and sick pay. This uniform policy and practice of
18 DEFENDANT is intended to purposefully avoid the payment of the correct overtime and double time
19 compensation, meal and rest period premiums, and sick pay as required by California law which
20 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
21 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
22 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

23 **D. Wage Statement Violations**

24 33. California Labor Code Section 226 requires an employer to furnish its employees an
25 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
26 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
27 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
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1 employee and only the last four digits of the employee's social security number or an employee
2 identification number other than a social security number, (8) the name and address of the legal entity
3 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee.

5 34. From time to time during the PAGA PERIOD, when PLAINTIFF and other
6 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
7 rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide
8 PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements
9 which failed to show, among other things, the total hours worked and all applicable hourly rates in
10 effect during the pay period and the corresponding amount of time worked at each hourly rate, correct
11 rates of pay for penalty payments or missed meal and rest periods.

12 35. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and the
13 AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code § 226.
14 Specifically, DEFENDANTS failed to include the correct total number of hours worked on the wage
15 statements.

16 36. As a result, DEFENDANT issued PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
18 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
19 to clerical or inadvertent mistake.

20 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

21 37. During the PAGA PERIOD, from time-to-time DEFENDANT failed and continue to fail
22 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

23 38. During the PAGA PERIOD, from time-to-time DEFENDANT required PLAINTIFF and
24 other AGGRIEVED EMPLOYEES to perform pre-shift and post-shift work all while off-the-clock.
25 This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-the-
26 clock.

27 39. DEFENDANT directed and directly benefited from the uncompensated off-the-clock
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1 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

2 40. DEFENDANT controlled the work schedules, duties, protocols, applications,
3 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

4 41. DEFENDANT was able to track the amount of time PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track, or
6 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the
7 work they performed.

8 42. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
9 subject to the requirements of the California Labor Code.

10 43. DEFENDANT's policies and practices deprived PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES of all minimum, regular, overtime, and double time wages owed for the
12 off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES
13 typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANT's
14 policies and practices also deprived them of overtime pay.

15 44. DEFENDANT knew or should have known that PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

17 45. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
18 them for all hours worked at DEFENDANT's direction, control and benefit for the time spent working
19 while off-the-clock. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the
20 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
21 evidenced by DEFENDANT's business records.

22 **F. Unreimbursed Business Expenses**

23 46. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally,
24 knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and other
26 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
27 DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify
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1 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
2 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
3 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
4 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
5 employee, at the time of obeying the directions, believed them to be unlawful."

6 47. In the course of their employment, DEFENDANT required PLAINTIFF and other
7 AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones as a
8 result of and in furtherance of their job duties. Specifically, PLAINTIFF and AGGRIEVED
9 EMPLOYEES were required to use their personal cell phones in order to perform work related tasks.
10 However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and AGGRIEVED
11 EMPLOYEES for the personal expenses incurred for the use of their personal cell phones. As a result,
12 in the course of their employment with DEFENDANT, the PLAINTIFF and other AGGRIEVED
13 EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to, costs
14 related to the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

15 **G. Violations for Untimely Payment of Wages**

16 48. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED
17 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF and
18 the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages, including,
19 but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period
20 premium wages within permissible time period.

21 **H. Unlawful Rounding Violations**

22 49. During the PAGA PERIOD, DEFENDANT did not have in place an immutable
23 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES
24 for the actual time these employees worked each day, including overtime hours. Specifically,
25 DEFENDANT had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and
26 AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result,
27 DEFENDANT was able to and did in fact unlawfully, and unilaterally round the time recorded in
28

1 DEFENDANT'S timekeeping system for PLAINTIFF and the AGGRIEVED EMPLOYEES in order
2 to avoid paying these employees for all their time worked, including the applicable overtime
3 compensation for overtime worked. As a result, PLAINTIFF, and other AGGRIEVED EMPLOYEES,
4 from time to time, forfeited compensation for their time worked by working without their time being
5 accurately recorded and without compensation at the applicable overtime rates.

6 50. Further, the mutability of DEFENDANT'S timekeeping system and unlawful rounding
7 policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time being inaccurately
8 recorded. As a result, from time to time, DEFENDANT'S unlawful rounding policy and practice
9 caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANT
10 for more than five (5) hours during a shift without receiving an off-duty meal break. Additionally,
11 DEFENDANT'S unlawful rounding policy and practice caused PLAINTIFF and AGGRIEVED
12 EMPLOYEES to perform work as ordered by DEFENDANT for more than ten (10) hours during a
13 shift without receiving a second off-duty meal break.

14 51. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off
15 duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods. PLAINTIFF
16 was required to perform work as ordered by DEFENDANTS for more than five (5) hours during a
17 shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF
18 with a second off-duty meal period each workday in which he was required by DEFENDANT to work
19 ten (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest break, they required
20 PLAINTIFF to remain on-duty and on-call, for the rest break. DEFENDANTS' policy caused
21 PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-duty meal periods.
22 PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in
23 accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS
24 also provided PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
25 DEFENDANTS failed to reimburse PLAINTIFF for required business expenses, including for the use
26 of his personal cell phone. The amount in controversy for PLAINTIFF individually does not exceed
27 the sum or value of \$75,000.

1 **FIRST CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

3 **[Cal. Lab. Code §§ 2698, et seq.]**

4 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

5 52. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
6 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

16 54. PLAINTIFF brings this Representative Action on behalf of the State of California with
17 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
18 DEFENDANT during the PAGA PERIOD.

19 55. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
20 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning of
21 Labor Code Section 2699(c).

22 56. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
23 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
24 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

25 57. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
26 Section 2699.3. By certified letter, return receipt requested, dated September 1, 2022, PLAINTIFF
27 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT
28

1 of the specific provisions of the Labor Code alleged to have been violated, including the facts and
2 theories to support the alleged violations. (See Exhibit #1.)

3 58. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA
4 with notice of DEFENDANT'S violations, the LWDA has not provided any notice by certified mail of
5 its intent to investigate the DEFENDANT'S alleged violations as mandated by Labor Code Section
6 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
7 commence and is authorized to pursue this cause of action.

8 59. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
9 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
10 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
11 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and 2804 in the following amounts:

12 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
13 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
14 for the initial violation and two hundred dollars (\$200) for AGGRIEVED
15 EMPLOYEE per pay period for each subsequent violation [penalty per
16 Labor Code Section 2699(f)(2)];

17 b. For violations of Labor Code Section 226(a), a civil penalty in the
18 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
19 EMPLOYEE for any initial violation and one thousand dollars for each
20 subsequent violation [penalty per Labor Code Section 226.3];

21 c. For violations of Labor Code Sections 204, a civil penalty in the
22 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
23 for any initial violation and two hundred dollars (\$200) for AGGRIEVED
24 EMPLOYEE for each subsequent violation [penalty per Labor Code
25 Section 210];

26 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
27 penalty in the amount of fifty dollars (\$50) for each underpaid
28

1 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
2 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
3 violation [penalty per Labor Code Section 558];

4 e. For violations of Labor Code Section 2269(a), a civil penalty in the
5 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
6 per violation in an initial citation and one thousand dollars (\$1,000) per
7 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
8 Labor Code Section 226.3];

9 f. For violations of Labor Code Section 1174(d), a civil penalty in the
10 amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE
11 [penalty per Labor Code Section 1174.5].

12 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
13 1199, a civil penalty in the amount of one hundred dollars (\$100) per
14 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
15 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
16 for each subsequent violation [penalty per Labor Code Section].

17 60. For all provisions of the Labor Code for which civil penalty is not specifically provided,
18 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
19 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
20 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
21 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
22 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

23 61. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected
25 other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519;
26 See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows
27 an "aggrieved employee"—a person affected by at least one Labor Code violation committed by an
28

1 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
2 Emphasis added, reh'g denied (June 13, 2018).)

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

6 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including
7 pursuant to Labor Code § 2699, *et seq.*;

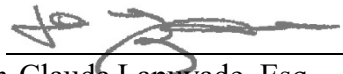
8 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
9 Private Attorneys General Act; and

10 (c) For such other relief as the Court deems just and proper.
11

12 Dated: November 8, 2022

Respectfully Submitted,

13
14 JCL LAW FIRM, APC

15 By: 
16 Jean-Claude Lapuyade, Esq.
17 Attorneys for PLAINTIFF

18
19 **DEMAND FOR JURY TRIAL**

20 PLAINTIFF demands a jury trial on all issues triable to a jury.

21 Dated: November 8, 2022

Respectfully Submitted,

22
23 JCL LAW FIRM, APC

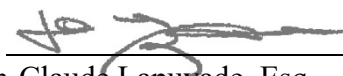
24 By: 
25 Jean-Claude Lapuyade, Esq.
26 Attorneys for PLAINTIFF
27
28

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client No. 53801

September 1, 2022

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

PERFORMANCE FOOD GROUP, INC.

c/o National Registered Agents, Inc.
330 N Brand Blvd Ste 700
Glendale, CA 91203

Sent via Certified Mail and Return Receipt 7021 1970 0001 8870 1071

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff MARCOS RODRIGUEZ (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant PERFORMANCE FOOD GROUP, INC. (“Defendant”). Plaintiff has been employed by Defendant in California since August of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contend that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the

Plaintiff, and (v) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
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San Diego, CA 92121
Telephone: (619) 599-8292
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ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
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shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARCOS RODRIGUEZ, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

PERFORMANCE FOOD GROUP, INC., a
Colorado corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

6) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7)FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

Plaintiff MARCOS RODRIGUEZ (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant PERFORMANCE FOOD GROUP, INC. (“DEFENDANT”) is a Colorado corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Alameda, and is a major distributor of food products.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all

1 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees.

4 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
5 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
6 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
7 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
8 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
9 at all relevant times.

10 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
11 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
13 employee a wage less than the minimum fixed by California state law, and as such, are subject to
14 civil penalties for each underpaid employee.

15 6. PLAINTIFF has been employed by DEFENDANT in California since August of
16 2021 and has at all times been classified by DEFENDANT as a non-exempt employee, paid on
17 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
18 and overtime wages due for all time worked.

19 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,
20 defined as all persons who are or previously were employed by DEFENDANT in California and
21 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
22 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
23 by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
24 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

25 8. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
27 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
28 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged

1 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
2 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
3 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
4 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
5 other members of the CALIFORNIA CLASS who have been economically injured by
6 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
7 relief.

8 9. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
9 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
10 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

11 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
12 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
13 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
14 injured by DEFENDANTS's past and current unlawful conduct, and all other appropriate legal
15 and equitable relief.

16 **JURISDICTION AND VENUE**

17 11. This has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
19 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
20 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

21 12. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
23 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
24 in this County and/or conducts substantial business in this County, and (ii) committed the
25 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

26
27 ///

THE CONDUCT

13. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements, and DEFENDANT'S understaffing,

1 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
2 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
3 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
4 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result,
5 the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and
6 overtime wages by regularly working without their time being accurately recorded and without
7 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
8 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
9 time worked is evidenced by DEFENDANTS' business records.

10 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
11 requirements, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
12 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
13 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
14 other CALIFORNIA CLASS Members were required from time to time to perform work as
15 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
16 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
17 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
18 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
19 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
20 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
21 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
22 Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other
23 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
24 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

25 **B. Rest Period Violations**

26 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS members were also required from time to time to work in excess of four
28 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work

1 requirements, and DEFENDANTS' inadequate staffing. Further, for the same reasons these
2 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
3 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
4 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
5 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
6 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
7 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
8 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
9 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS'
10 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
11 time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

12 **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

13 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
14 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
15 Members for their overtime hours worked, meal and rest period premiums, and sick pay. As a
16 result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due them for
17 working overtime without compensation at the correct overtime, meal and rest period premiums,
18 and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the PLAINTIFF and
19 the CALIFORNIA CLASS the correct overtime rate for all overtime worked, meal and rest period
20 premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS'
21 business records.

22 18. State law provides that employees must be paid overtime at one-and-one half times
23 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
24 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
25 employee's performance.

26 19. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Member's compensation was DEFENDANTS' non-discretionary incentive program that paid
28 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their

1 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
2 paid on an hourly basis with bonus, and/or commission compensation when the employees met
3 the various performance goals set by DEFENDANTS. Additionally, DEFENDANT gave
4 PLAINTIFF and the CALIFORNIA CLASS received bonuses when the employees met various
5 performance goals set by DEFENDANT.

6 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay
7 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime and
8 earned this non-discretionary bonus, commission, or incentive DEFENDANTS failed to
9 accurately include the non-discretionary bonus compensation and/or incentive paid as part of the
10 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
11 overtime hours worked. Further, when calculating the regular rate of pay in order to pay sick pay
12 to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include the incentive
13 compensation as part of the employees' "regular rate of pay" for purposes of calculating sick pay.
14 Management and supervisors described the incentive/bonus program to potential and new
15 employees as part of the compensation package. As a matter of law, the incentive compensation
16 received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the
17 "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime
18 and/or sick pay compensation to PLAINTIFF and other CALIFORNIA CLASS Members by
19 DEFENDANTS.

20 21. As a matter of law, the incentive and commission compensation received by
21 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
22 calculated into the "regular rate of pay" for purposes of overtime compensation, meal and rest
23 period premiums, and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS'
24 systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay
25 to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code
26 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
27 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
28 sick time, whether or not the employee actually works overtime in that workweek.

1 DEFENDANT’S conduct, as articulated herein, by failing to include the incentive compensation
2 as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of Cal.
3 Lab. Code § 246.

4 22. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
6 matter of company policy, practice, and procedure, intentionally, and knowingly failed to
7 compensate PLAINTIFF and the CALIFORNIA CLASS at the correct rate of pay for all overtime
8 and/or sick pay compensation. This uniform policy and practice of DEFENDANTS is intended
9 to purposefully avoid the payment of the correct overtime and/or sick pay compensation as
10 required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
11 advantage over competitors who complied with the law. To the extent equitable tolling operates
12 to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
13 be adjusted accordingly.

14 **D. Wage Statement Violations**

15 23. California Labor Code Section 226 requires an employer to furnish its employees
16 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
17 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
18 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
19 of the employee and only the last four digits of the employee’s social security number or an
20 employee identification number other than a social security number, (8) the name and address of
21 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate by the employee.

23 24. From time to time during the CLASS PERIOD, when PLAINTIFF and other
24 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
25 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
26 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
27 wage statements which failed to show, among other things, the total hours worked and all
28 applicable hourly rates in effect during the pay period and the corresponding amount of time

1 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
2 periods.

3 25. In addition to the violations described above, DEFENDANTS, from time to time,
4 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
5 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the correct
6 total number of hours worked on the wage statements.

7 26. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
9 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
10 unintentional payroll error due to clerical or inadvertent mistake.

11 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
13 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
14 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
15 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-
16 shift and post-shift work.

17 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
18 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work off-the-clock,
19 including but not limited to, being required to tend to DEFENDANTS' winery and distillery
20 operations during meal breaks. This resulted in PLAINTIFF and other members of the
21 CALIFORNIA CLASS to have to work while off-the-clock.

22 29. DEFENDANTS directed and directly benefited from the uncompensated off-the-
23 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

24 30. DEFENDANTS controlled the work schedules, duties, protocols, applications,
25 assignments, and employment conditions of PLAINTIFF and the other members of the
26 CALIFORNIA CLASS.

27 31. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
28 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to

1 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
2 wages earned and owed for all the work they performed, including pre-shift, post shift and during
3 meal period off-the-clock work.

4 32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
5 exempt employees, subject to the requirements of the California Labor Code.

6 33. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
7 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
8 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
9 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
10 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

11 34. DEFENDANTS knew or should have known that PLAINTIFF and the other
12 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

13 35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
14 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
15 for the time spent tending to the operational needs of DEFENDANTS' wineries and distilleries
16 while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and
17 the members of the CALIFORNIA CLASS wages for all hours worked in accordance with
18 applicable law is evidenced by DEFENDANTS' business records.

19 **F. Unreimbursed Business Expenses**

20 36. DEFENDANT as a matter of corporate policy, practice, and procedure,
21 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
22 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
23 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
24 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
25 are required to indemnify employees for all expenses incurred in the course and scope of their
26 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 37. In the course of their employment, DEFENDANT required PLAINTIFF and other
4 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
5 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
6 CALIFORNIA CLASS Members were required to use their personal cell phones in order to
7 perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF
8 and other CALIFORNIA CLASS Members for the personal expenses incurred for the use of their
9 personal cell phones. As a result, in the course of their employment with DEFENDANT, the
10 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
11 expenses that included, but were not limited to, costs related to the use of their personal cell
12 phones, all on behalf of and for the benefit of DEFENDANT.

13 **G. CLASS ACTION ALLEGATIONS**

14 38. PLAINTIFF bring this Class Action on behalf of himself, and a California class
15 defined as all persons who are or previously were employed by DEFENDANT in California and
16 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
17 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
18 by the Court (the "CLASS PERIOD").

19 39. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
20 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
21 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
22 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
23 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
24 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

25 40. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 41. Common questions of law and fact regarding DEFENDANTS' conduct, including
28 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failure to

1 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
2 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
3 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
4 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
5 minimum wage and overtime, exist as to all members of the class and predominate over any
6 questions affecting solely any individual members of the class. Among the questions of law and
7 fact common to the class are:

- 8 a. Whether DEFENDANTS maintained legally compliant meal period policies and
9 practices;
- 10 b. Whether DEFENDANTS maintained legally compliant rest period policies and
11 practices;
- 12 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
13 CLASS Members accurate premium payments for missed meal and rest periods;
- 14 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members accurate overtime wages;
- 16 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members accurate sick pay;
- 18 f. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
19 CLASS Members at least minimum wage for all hours worked;
- 20 g. Whether DEFENDANTS issued legally compliant wage statements;
- 21 h. Whether DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA
22 CLASS Members for all business expenses;
- 23 i. Whether DEFENDANTS committed an act of unfair competition by
24 systematically failing to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked;
- 26 j. Whether DEFENDANTS committed an act of unfair competition by
27 systematically failing to record all meal and rest breaks missed by PLAINTIFF
28 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed

1 the benefit of this work, required employees to perform this work and permits or
2 suffers to permit this work;

3 k. Whether DEFENDANTS committed an act of unfair competition in violation of
4 the UCL, by failing to provide the PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with the legally required meal and rest periods.

6 42. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
7 a result of DEFENDANTS' conduct and actions alleged herein.

8 43. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
9 the same interests as the other members of the class.

10 44. PLAINTIFF will fairly and adequately represent and protect the interests of the
11 CALIFORNIA CLASS Members.

12 45. PLAINTIFF retained able class counsel with extensive experience in class action
13 litigation.

14 46. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
15 interests of the other CALIFORNIA CLASS Members.

16 47. There is a strong community of interest among PLAINTIFF and the members of
17 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
18 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
19 sustained.

20 48. The questions of law and fact common to the CALIFORNIA CLASS Members
21 predominate over any questions affecting only individual members, including legal and factual
22 issues relating to liability and damages.

23 49. A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy because joinder of all class members is impractical. Moreover,
25 since the damages suffered by individual members of the class may be relatively small, the
26 expense and burden of individual litigation makes it practically impossible for the members of the
27 class individually to redress the wrongs done to them. Without class certification and
28 determination of declaratory, injunctive, statutory and other legal questions within the class

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

- 3 a. Inconsistent or varying adjudications with respect to individual members of the
4 CALIFORNIA CLASS which would establish incompatible standards of conduct
5 for the parties opposing the CALIFORNIA CLASS; and/or,
- 6 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
7 which would as a practical matter be dispositive of the interests of the other
8 members not party to the adjudication or substantially impair or impeded their
9 ability to protect their interests.

10 50. Class treatment provides manageable judicial treatment calculated to bring an
11 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
12 the conduct of DEFENDANTS.

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

15 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 51. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 52. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

22 53. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
23 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
24 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
25 as follows:

26 Any person who engages, has engaged, or proposes to engage in unfair competition
27 may be enjoined in any court of competent jurisdiction. The court may make such
28 orders or judgments, including the appointment of a receiver, as may be necessary

1 to prevent the use or employment by any person of any practice which constitutes
2 unfair competition, as defined in this chapter, or as may be necessary to restore to
3 any person in interest any money or property, real or personal, which may have
4 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
5 17203).

6 54. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to, the
8 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
9 including Sections 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 for which
10 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
11 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
12 competition, including restitution of wages wrongfully withheld.

13 55. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
14 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
15 or substantially injurious to employees, and were without valid justification or utility for which
16 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
17 Business & Professions Code, including restitution of wages wrongfully withheld.

18 56. By the conduct alleged herein, DEFENDANT's practices were deceptive and
19 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
20 mandated meal and rest periods and the required amount of compensation for missed meal and
21 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
22 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
23 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
24 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

25 57. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
26 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANT.

1 58. By the conduct alleged herein, DEFENDANT's practices were also unfair and
2 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
3 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
4 as required by Cal. Lab. Code §§ 226.7 and 512.

5 59. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
6 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
7 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
8 each workday in which a second off-duty meal period was not timely provided for each ten (10)
9 hours of work.

10 60. PLAINTIFF further demands on behalf of himself and on behalf of each
11 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
12 not timely provided as required by law.

13 61. By and through the unlawful and unfair business practices described herein,
14 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
15 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
16 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
17 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
18 to unfairly compete against competitors who comply with the law.

19 62. All the acts described herein as violations of, among other things, the Industrial
20 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
21 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
22 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
23 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

24 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
25 and do, seek such relief as may be necessary to restore to them the money and property which
26 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
27 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
28 business practices, including earned but unpaid wages for all time worked.

1 64. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
4 engaging in any unlawful and unfair business practices in the future.

5 65. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
6 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
7 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
8 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
9 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
10 and economic harm unless DEFENDANT is restrained from continuing to engage in these
11 unlawful and unfair business practices.

12 **SECOND CAUSE OF ACTION**

13 **Failure To Pay Minimum Wages**

14 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

16 66. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
17 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
18 Complaint.

19 67. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
20 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
21 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
22 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

23 68. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
24 policy, an employer must timely pay its employees for all hours worked.

25 69. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
27 the minimum so fixed is unlawful.

1 70. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
2 including minimum wage compensation and interest thereon, together with the costs of suit.

3 71. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
4 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
5 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
6 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 72. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
10 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
11 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

12 73. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately calculated the amount of time worked and consequently underpaid the actual time
14 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
15 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
16 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
17 laws and regulations.

18 74. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
19 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
20 minimum wage compensation for their time worked for DEFENDANT.

21 75. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
23 failure to pay all earned wages.

24 76. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
26 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
27 suffered and will continue to suffer an economic injury in amounts which are presently unknown
28 to them, and which will be ascertained according to proof at trial.

1 77. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS are under-compensated for their time worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
7 for their time worked.

8 78. In performing the acts and practices herein alleged in violation of California labor
9 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
10 and provide them with the requisite compensation, DEFENDANT acted and continues to act
11 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
13 consequences to them, and with the despicable intent of depriving them of their property and legal
14 rights, and otherwise causing them injury in order to increase company profits at the expense of
15 these employees.

16 79. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
17 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
18 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
19 California Labor Code and/or other applicable statutes. To the extent minimum wage
20 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
21 terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or
22 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
23 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
24 Members. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good
25 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
26 recover statutory costs.

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

3 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 80. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 81. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANT's willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
12 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

13 82. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
14 policy, an employer must timely pay its employees for all hours worked.

15 83. Cal. Lab. Code § 510 further provides that employees in California shall not be
16 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
17 unless they receive additional compensation beyond their regular wages in amounts specified by
18 law.

19 84. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
20 including minimum wage and overtime compensation and interest thereon, together with the costs
21 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
22 than those fixed by the Industrial Welfare Commission is unlawful.

23 85. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
24 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
25 they worked, including overtime work.

26 86. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
28 implementing a uniform policy and practice that failed to accurately record overtime worked by

1 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
2 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
3 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
4 (12) hours in a workday, and/or forty (40) hours in any workweek.

5 87. In committing these violations of the California Labor Code, DEFENDANT
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
8 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
9 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
10 regulations.

11 88. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
13 compensation for overtime worked.

14 89. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
15 from the overtime requirements of the law. None of these exemptions are applicable to the
16 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
17 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
18 agreement that would preclude the causes of action contained herein this Complaint. Rather,
19 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
20 DEFENDANT's violations of non- negotiable, non-waivable rights provided by the State of
21 California.

22 90. During the CLASS PERIOD, PLAINTIFF and the other members of the
23 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
24 constituting a failure to pay all earned wages.

25 91. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
26 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
27 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
28 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,

1 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
2 evidenced by DEFENDANT's business records and witnessed by employees.

3 92. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
5 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
6 CLASS have suffered and will continue to suffer an economic injury in amounts which are
7 presently unknown to them, and which will be ascertained according to proof at trial.

8 93. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
10 DEFENDANT systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
12 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

14 94. In performing the acts and practices herein alleged in violation of California labor
15 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
16 worked and provide them with the requisite overtime compensation, DEFENDANT acted and
17 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
18 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,
19 or the consequences to them, and with the despicable intent of depriving them of their property
20 and legal rights, and otherwise causing them injury in order to increase company profits at the
21 expense of these employees.

22 95. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
23 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
24 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
25 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
26 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
27 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
28 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time

1 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
2 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,
3 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
4 Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

9 96. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 97. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by
15 PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
18 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
19 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
20 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
21 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period in some workdays in which these employees were
23 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
24 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
25 and in accordance with DEFENDANT's strict corporate policy and practice.

26 98. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a
2 meal period was not provided.

3 99. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 100. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 101. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
14 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
15 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
16 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
18 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
19 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
20 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
22 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
23 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
24 periods is evidenced by DEFENDANT's business records.

25 102. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
26 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
27 who were not provided a rest period, in accordance with the applicable Wage Order, one
28

1 additional hour of compensation at each employee's regular rate of pay for each workday that rest
2 period was not provided.

3 103. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 104. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 105. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 "accurate itemized" statement in writing showing:

- 15 1. Gross wages earned,
- 16 2. total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment of
18 overtime under subdivision (a) of Section 515 or any applicable order of the
19 Industrial Welfare Commission,
- 20 3. the number of piece-rate units earned and any applicable piece rate if the
21 employee is paid on a piece-rate basis,
- 22 4. all deductions, provided that all deductions made on written orders of the
23 employee may be aggregated and shown as one item,
- 24 5. net wages earned,
- 25 6. the inclusive dates of the period for which the employee is paid,
- 26 7. the name of the employee and his or her social security number, except that
27 by January 1, 2008, only the last four digits of his or her social security number of
28 an employee identification number other than social security number may be shown
on the itemized statement,
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.

106. When DEFENDANT did not accurately record PLAINTIFF's and other
CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, DEFENDANT
violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement
in writing that properly and accurately itemizes all wages, and missed meal and rest periods and

1 reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA CLASS
2 and thereby also failed to set forth the correct wages earned by the employees. During the CLASS
3 PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
4 CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately
5 show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross
6 wages earned; and (4) all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate by the employee in violation of
8 California Labor Code Section 226(a). In addition to the foregoing, DEFENDANTS failed to
9 provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS
10 that complied with the requirements of California Labor Code Section 226.

11 107. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
12 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
13 CLASS. These damages include, but are not limited to, costs expended calculating the correct
14 wages for all missed meal and rest breaks and the amount of employment taxes which were not
15 properly paid to state and federal tax authorities. These damages are difficult to estimate.
16 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
17 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
18 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
19 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
20 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
21 of the CALIFORNIA CLASS herein).

22 **SEVENTH CAUSE OF ACTION**

23 **Failure To Reimburse Employees for Required Expenses**

24 **(Cal. Lab. Code §§ 2802)**

25 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

26 108. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA CLASS:
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

///

1 3. On all claims:

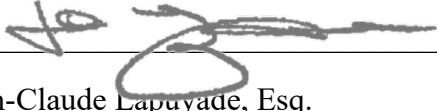
- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

5

6 DATED: September 1, 2022

JCL LAW FIRM, APC

7

8 By:  _____

9 Jean-Claude Lapuyade, Esq.

10 Attorney for PLAINTIFF

11 **DEMAND FOR A JURY TRIAL**

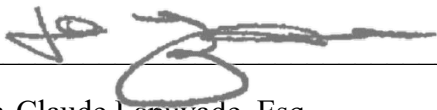
12 PLAINTIFF demands a jury trial on issues triable to a jury.

13

14 DATED: September 1, 2022

JCL LAW FIRM, APC

15

16 By:  _____

17 Jean-Claude Lapuyade, Esq.

18 Attorney for PLAINTIFF

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

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Performance Food Group, Inc.
 c/o National Registered Agents, Inc.
 330 N Brand Blvd, Ste 700
 Glendale CA 91203



9590 9402 7020 1225 2861 33

2. Article Number (Transfer from service label)

7021 1970 0001 8870 1071

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☐ Agent☐ Addressee

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C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

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9/1/22 Rodriguez 002-395

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