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and on behalf of all others similarly situated.

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

EZEQUIEL RAMIREZ RODRIGUEZ,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

HABERFELDE FORD; and DOES 1
through 20, inclusive,

Defendants.

Case No. BCV-24-101248

*Assigned for All Purposes to:
Judge Bernard C. Barmann, Jr; Dept. H*

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Pay for Non-Productive Time
6. Unlawful Deductions;
7. Failure to Reimburse Business Expenses;
8. Failure to Provide Accurate Itemized Wage Statements;
9. Failure to Pay All Wages Due Upon Separation of Employment;
10. Violation of Business and Professions Code §§ 17200, *et seq.*; and
11. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Ezequiel Ramirez Rodriguez, individually and on behalf of others similarly
2 situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Ezequiel Ramirez Rodriguez (“Plaintiff”) brings this putative class action
5 and representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code.
6 § 2698 *et seq.*, against defendants Habermel Ford, and DOES 1 through 20, inclusive
7 (collectively, “Defendants”), on Plaintiff’s own behalf and on behalf of persons who are and
8 were employed by any or all Defendants as non-exempt employees throughout California.

9 2. Defendants provide services or goods throughout California.

10 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
12 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
13 competition.

14 4. Plaintiff is informed and believe, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including minimum wages and overtime wages);
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation
19 in lieu thereof;
- 20 (d) failing to pay wages for non-productive time, including time spent in rest
21 breaks;
- 22 (e) making unlawful deductions from wages;
- 23 (f) failing to reimburse necessary business-related costs;
- 24 (g) failing to provide accurate itemized wage statements;
- 25 (h) failing to pay wages timely during employment; and
- 26 (i) failing to pay all wages due upon separation of employment.

27 5. Plaintiff seeks monetary relief against Defendants on behalf of Plaintiff and all
28 others similarly situated in California to recover, among other things, unpaid wages, un-

1 reimbursed business expenses, benefits, interest, attorneys' fees, costs and expenses, and
2 penalties pursuant to Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 225.5, 226, 226.2, 226.3,
3 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802,
4 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

5 **JURISDICTION AND VENUE**

6 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
7 monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of
8 the Superior Court and will be established according to proof at trial.

9 7. This Court has jurisdiction over this action pursuant to the California
10 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes
11 except those given by statutes to other courts. The statutes under which this action is brought do
12 not specify any other basis for jurisdiction.

13 8. This Court has jurisdiction over all Defendants because, upon information and
14 belief, they are citizens of California, have sufficient minimum contacts in California, or
15 otherwise intentionally avail themselves of the California market so as to render the exercise of
16 jurisdiction over them by the California courts consistent with traditional notions of fair play and
17 substantial justice.

18 9. Venue is proper in this Court because, upon information and belief, Defendants
19 reside, transact business, or have offices in this county, and the acts and omissions alleged herein
20 took place in this county.

21 **THE PARTIES**

22 10. Plaintiff is a resident of California and worked for Defendants during the relevant
23 time periods as alleged herein.

24 11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter
25 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as
26 employers, whose employees were and are engaged throughout this county and the State of
27 California.

1 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
2 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
3 Complaint and serve such fictitiously named defendants once their names and capacities become
4 known.

5 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
6 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
7 all relevant times.

8 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
9 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
11 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
12 employer and/or joint employer of Plaintiff and the class members.

13 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
14 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
15 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
16 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
17 official policy of Defendants.

18 16. At all relevant times, Defendants, and each of them, acted within the scope of
19 such agency or employment, or ratified each and every act or omission complained of herein. At
20 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
21 each and all the other Defendants in proximately causing the damages herein alleged.

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

25 **CLASS ACTION ALLEGATIONS**

26 18. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's own
27 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor
28 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

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

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

4 Class

5 All California citizens currently or formerly employed by any or all Defendants as
6 non-exempt employees in the State of California at any time between October 15,
7 2019¹ and the date of class certification ("Class").

8 21. Plaintiff also seeks to certify the following subclasses of employees:

9 Waiting Time Subclass

10 All members of the Class who separated their employment with any or all
11 Defendants at any time between October 15, 2020 and the date of class
12 certification ("Waiting Time Subclass").

13 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
14 subclasses, or modify or re-define any class or subclass definition as appropriate based on
15 investigation, discovery, and specific theories of liability.

16 23. Members of the Class and the Waiting Time Subclass described above will be
17 collectively referred to as "Class Members."

18 24. There are common questions of law and fact as to the Class Members that
19 predominate over any questions affecting only individual members including, but not limited to,
20 the following:

21 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
22 (including minimum wages and overtime wages) for all hours worked by
23 Plaintiff and Class Members.

24 (b) Whether Defendants required Plaintiff and Class Members to work over
25 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
26

27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

(40) hours per week and failed to pay them proper overtime compensation for all overtime hours worked.

(c) Whether Defendants deprived Plaintiff and Class Members of timely meal periods or required Plaintiff and Class Members to work through meal periods without legal compensation.

(d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or required Plaintiff and Class Members to work through rest breaks.

(e) Whether Defendants failed to pay Plaintiffs and Class Members for non-productive time, including time spent in rest breaks.

(f) Whether Defendants made unlawful deductions from Plaintiffs' and class members' wages.

(g) Whether Defendants failed to reimburse Plaintiff and Class Members for necessary business-related costs expended for the benefit of Defendants.

(h) Whether Defendants failed to provide Plaintiff and Class Members accurate itemized wage statements.

(i) Whether Defendants failed to pay wages timely to Plaintiff and Class Members;

(j) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation.

(k) Whether Defendants' conduct was willful or reckless.

(l) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and subclasses are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than fifty (50) individuals. The

1 identities of the Class Members are readily ascertainable by inspection of Defendants'
2 employment and payroll records.

3 (b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims
4 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
5 provisions of California's wage and hour laws entitled each Class Member to similar pay,
6 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
7 sustained by the Class Members, because they arise out of and are caused by Defendants'
8 common course of conduct as alleged herein.

9 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
10 interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims
11 alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed
12 class counsel, are competent and experienced in litigating large employment class actions and
13 versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
14 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and
15 costs that have been and will be necessarily expended for the prosecution of this action for the
16 substantial benefit of the Class Members.

17 (d) Superiority: The nature of this action makes use of class action
18 adjudication superior to other methods. A class action will achieve economies of time, effort, and
19 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the
20 same issues can be adjudicated in the same manner for the entire Class and Waiting Time
21 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
22 to efficiently manage this case as a class action.

23 (e) Public Policy Considerations: Employers in the State of California violate
24 employment and labor laws every day. Current employees are often afraid to assert their rights
25 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
26 because they believe their former employers might damage their future endeavors through
27 negative references and/or other means. Class actions provide class members who are not named
28

1 in the complaint with a type of anonymity that allows for the vindication of their rights while
2 affording them privacy protections.

3 **GENERAL ALLEGATIONS**

4 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
5 California residents as non-exempt employees throughout California.

6 27. Defendants continue to employ non-exempt employees within California.

7 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
9 were knowledgeable about California's wage and hour laws, employment and personnel
10 practices, and the requirements of California law.

11 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and Class Members were entitled to receive wages for all time
13 worked (including minimum wages and overtime wages) and that they were not receiving all
14 wages earned for work that was required to be performed. In violation of the Labor Code and
15 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
16 wages and overtime wages) for all hours worked at the correct rate and within the correct time,
17 and were not paid for non-productive time.

18 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Class Members were entitled to receive all required meal
20 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
21 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
22 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal periods
23 or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of
24 pay when they did not receive a timely, uninterrupted meal period.

25 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
27 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
28 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage

1 Orders, Plaintiff and Class Members did not receive all rest breaks or payment of one (1)
2 additional hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest break
3 was missed, late, or interrupted.

4 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and Class Members were entitled to all earned wages without
6 unlawful deductions. In violation of the California Labor Code, Defendants made unlawful
7 deductions from Plaintiffs' and Class Members' wages.

8 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Class Members were entitled to reimbursement and/or
10 indemnification for all necessary business expenditures or losses as a direct consequence of the
11 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the
12 Labor Code and IWC Wage Orders, Plaintiff and Class Members incurred necessary business
13 expenses or losses, but were not reimbursed nor indemnified of such expenses or losses that were
14 incurred as a direct consequence of the discharge of their duties, or of their obedience to the
15 directions of Defendants.

16 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Class Members were entitled to receive itemized wage
18 statements that accurately showed the following information pursuant to the Labor Code: (1)
19 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
20 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
21 deductions, provided that all deductions made on written orders of the employee may be
22 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
23 which the employee is paid; (7) the name of the employee and only the last four digits of his or
24 her social security number or an employee identification number other than a social security
25 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at
27 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
28 were not provided with accurate itemized wage statements.

1 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
3 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
4 not receive payment of all wages within the permissible time periods.

5 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known they had a duty to compensate Plaintiff and Class Members, and Defendants
7 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
8 failed to do so in order to increase Defendants' profits.

9 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
10 against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover,
11 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
12 period premium payments, unpaid rest period premium payments, unreimbursed business
13 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

17 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
20 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
21 wage than the minimum so fixed is unlawful.

22 40. Plaintiff and Class Members were employees entitled to the protections of Labor
23 Code §§ 1194 and 1197.

24 41. During the relevant time period, Defendants failed to pay Plaintiff and Class
25 Members all wages owed when Defendants did not pay minimum wage for all hours worked.

26 42. During the relevant time period, Defendants failed to pay at least minimum wage
27 to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.
28

43. Defendants' failure to pay Plaintiff and Class Members the required minimum wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

44. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

46. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

47. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and one-half times (1½) their regular rate of pay when working and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

48. The applicable IWC Wage Orders further provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

49. California Labor Code § 510 codifies the right to overtime compensation at one and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh

1 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
2 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
3 seventh day of work in a workweek.

4 50. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
5 of more than six days in a workweek is only permissible if the employer pays proper overtime
6 compensation as set forth herein.

7 51. Plaintiff and Class Members were employees entitled to the protections of
8 California Labor Code §§ 510 and 1194.

9 52. During the relevant time period, Defendants required Plaintiff and Class Members
10 to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh
11 consecutive day of work, entitling them to overtime wages.

12 53. During the relevant time period, Defendants failed to pay Plaintiff and Class
13 Members overtime wages for all overtime hours worked. To the extent these hours qualify for
14 the payment of overtime wages, Plaintiff and Class Members were not paid proper overtime
15 wages.

16 54. In violation of California law, Defendants knowingly and willfully refused to
17 perform their obligations and compensate Plaintiff and Class Members for all wages earned and
18 all hours worked.

19 55. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
20 overtime compensation, as required by California law, violates the provisions of Labor Code §§
21 510 and 1198, and is therefore unlawful.

22 56. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
23 recover their unpaid overtime and double time compensation as well as interest, costs, and
24 attorneys' fees.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PROVIDE MEAL PERIODS**

27 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

1 57. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
2 though fully set forth herein.

3 58. Labor Code § 226.7 provides that no employer shall require an employee to work
4 during any meal period mandated by the IWC Wage Orders.

5 59. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
6 employ any person for a work period of more than five (5) hours without a meal period of not
7 less than 30 minutes, except that when a work period of not more than six (6) hours will
8 complete the day’s work the meal period may be waived by mutual consent of the employer and
9 the employee.”

10 60. Labor Code § 512(a) provides that an employer may not require, cause, or permit
11 an employee to work for a period of more than five (5) hours in a day without providing the
12 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
13 the total work period per day of the employee is not more than six (6) hours, the meal period may
14 be waived by mutual consent of both the employer and the employee.

15 61. Labor Code § 512(a) also provides that an employer may not employ an employee
16 for a work period of more than ten (10) hours per day without providing the employee with a
17 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
18 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
19 employer and the employee only if the first meal period was not waived.

20 62. During the relevant time period, Plaintiff and Class Members worked more than
21 five (5) or ten (10) hours and did not receive all compliant meal periods because their meal
22 periods were missed, late, short, interrupted, and/or they were not permitted to take a second
23 meal period.

24 63. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
25 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
26 compensation for each work day that a compliant meal period is not provided.

27 ///

28 ///

1 64. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
2 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
3 and section 11 of the applicable IWC Wage Order.

4 65. As a result of Defendants' failure to pay Plaintiff and Class Members an
5 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
6 Class Members suffered and continue to suffer a loss of wages and compensation.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PERMIT REST BREAKS**

9 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

10 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 67. Labor Code § 226.7(a) provides that no employer shall require an employee to
13 work during any rest period mandated by the IWC Wage Orders.

14 68. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
15 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
16 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
17 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
18 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

19 69. During the relevant time period, Plaintiff and Class Members did not receive all
20 ten (10) minute rest periods for every four (4) hours or major fraction thereof worked, including
21 working in excess of ten (10) hours, because they were required to work through their rest
22 periods and/or were not authorized to take their rest periods.

23 70. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
24 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
25 compensation for each work day that a compliant rest period is not provided.

26 71. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
27 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
28 226.7(b) and section 12 of the applicable IWC Wage Order.

1 72. As a result of Defendants' failure to pay Plaintiff and Class Members an
2 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
3 Members suffered and continue to suffer a loss of wages and compensation.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PAY FOR NON-PRODUCTIVE TIME**

6 (Violation of Labor Code §§ 226.2; Violation of IWC Wage Order)

7 73. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
8 though fully set forth herein.

9 74. Labor Code § 226.2 requires employees who are paid on a piece-rate or
10 commission basis to be compensated for rest and recovery periods and other nonproductive time
11 separate from any piece-rate compensation.

12 75. 58. Labor Code § 226.2(a) provides that employees compensated on a piece-
13 rate basis shall be compensated for rest and recovery periods, and other nonproductive time
14 separate from any piece-rate compensation. Employees shall be compensated at a regular hourly
15 rate that is no less than the higher of (a) An average hourly rate determined by dividing the total
16 compensation for the workweek, exclusive of compensation for rest and recovery periods and
17 any premium compensation for overtime, by the total hours worked during the workweek,
18 exclusive of rest and recovery periods. (b) The applicable minimum wage.

19 76. During the relevant time period, Plaintiff and Class Members paid on a piece-rate
20 or draw basis were not compensated for rest and recovery periods and other nonproductive time
21 separate from any piece-rate or draw compensation.

22 77. At all relevant times, Defendants knowingly and intentionally failed to comply
23 with Labor Code § 226.2 denying compensation for rest and recovery periods.

24 78. As a result of Defendants' failure to pay Plaintiff and Class Members
25 compensated rest and recovery periods, Plaintiff and Class Members suffered and continue to
26 suffer a loss of wages and compensation.

27 79. Pursuant to Labor Code § 226.2, Plaintiff and Class Members are entitled to
28 recover their unpaid compensation.

1 **SIXTH CAUSE OF ACTION**

2 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**

3 (Violation of Labor Code § 221, 223, 224; Violation of IWC Wage Order)

4 80. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 81. Labor Code § 221 provides that employers may not collect or receive from an
7 employee any part of wages theretofore paid by said employer to said employee. Labor Code §
8 223 provides that where a contract requires an employer to maintain the designated wage scale, it
9 is unlawful to pay a lower wage while purporting to pay the wage designated by contract. Labor
10 Code § 224 prohibits employers from making deductions from an employee's wages not
11 authorized by the employee in writing or permitted by law.

12 82. During the relevant time period, Defendants had a policy and practice of making
13 unlawful deductions from earned wages of Plaintiffs and Class Members.

14 83. As a result of Defendants' failure to refrain from making improper deductions
15 from earned wages, Plaintiffs and Class Members suffered and continue to suffer a loss of wages
16 and compensation, the exact amount of damages and/or penalties is all in an amount to be shown
17 according to proof at trial.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 (Violation of Labor Code §§ 2800, 2802)

21 84. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 85. Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his
24 employee for losses caused by the employer's want of ordinary care."

25 86. Labor Code § 2802(a) states that "[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
28 the employer"

87. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

88. Labor Code § 2802(c) states that “[f]or purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

89. During the relevant time period, Plaintiff and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants.

90. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or indemnify Plaintiff and Class Members for their expenses due to Defendants' knowing and intentional failure to reimburse necessary business expenditures in connection with Plaintiff's and Class Members' work and job duties.

91. As a direct result, Plaintiff and Class Members have suffered and continue to suffer losses, and therefore seek complete reimbursement and indemnification of necessary business expenditures or losses, interest thereon at the required rate, and all reasonable costs in enforcing the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

93. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including, the following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for

1 which the employee is paid, (7) the name of the employee and the last four digits of his or her
2 social security number or an employee identification number other than a social security number,
3 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each
5 hourly rate by the employee.

6 94. During the relevant time period, Defendants have knowingly and intentionally
7 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
8 and Class Members. The deficiencies include, among other things, the failure to correctly state
9 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
10 number of hours worked at each hourly rate by Plaintiff and Class Members.

11 95. As a result of Defendants' knowing and intentional failure to comply with Labor
12 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
13 protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an injury
14 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §
15 226(a). Plaintiff and Class Members were denied both their legal right to receive, and their
16 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
17 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
18 Defendants prevented Plaintiff and Class Members from determining if all hours worked were
19 paid at the appropriate rate and the extent of the underpayment. Plaintiff had to file this lawsuit
20 in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses
21 and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had
22 Defendants provided the accurate hours worked, wages earned, and rates of pay. This has also
23 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

24 96. Plaintiff and Class Members are entitled to recover from Defendants the greater of
25 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
26 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
27 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
28 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

97. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and Class Members from knowing, understanding, and disputing the wages paid to them and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members have suffered an injury, in the exact amount of damages and/or penalties to be shown according to proof at trial.

NINTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violation of Labor Code §§ 201, 202, and 203)

98. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

99. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

100. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

101. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

102. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

1 103. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
2 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members’
3 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a
4 maximum of thirty (30) days.

5 **TENTH CAUSE OF ACTION**

6 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

7 (Violation of Business and Professions Code §§ 17200, *et seq.*)

8 104. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
9 though fully set forth herein.

10 105. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
11 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . .
12 . .”

13 106. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
14 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
15 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
16 suffer injuries-in-fact.

17 107. Defendants’ policies and practices violated state law in at least the following
18 respects:

19 (a) Failing to pay all wages earned (including minimum wage, non-productive
20 time pay, and overtime wages) to Plaintiff and Class Members at the
21 proper rate and in a timely manner in violation of Labor Code §§ 204,
22 226.2, 510, 1194, 1194.2, 1197, 1198.

23 (b) Failing to provide compliant meal periods without paying Plaintiff and
24 Class Members premium wages for every day said meal periods were not
25 provided in violation of Labor Code §§ 226.7 and 512.

26 (c) Failing to authorize or permit compliant rest breaks without paying
27 Plaintiff and Class Members premium wages for every day said rest
28

breaks were not authorized or permitted in violation of Labor Code § 226.7.

(d) Failing to refrain from making unlawful deductions from wages in violation of Labor Code §§ 221, 223, and 224.

(e) Failing to reimburse Plaintiff and Class Members for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802.

(f) Failing to provide Plaintiff and Class Members with accurate itemized wage statements in violation of Labor Code § 226.

(g) Failing to timely pay all earned wages to the members of the Waiting Time Subclass upon separation of employment in violation of Labor Code §§ 201, 202, and 203.

108. As alleged herein, Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages (minimum and overtime wages), failing to provide meal periods and rest breaks or compensation in lieu thereof, failing to pay for non-productive time, failing to refrain from making unlawful deductions, failing to reimburse necessary business-related costs and expenses, failing to furnish accurate wage statements, and failing to pay all wages due and owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in order to decrease their costs of doing business and increase their profits.

109. At all relevant times herein, Defendants held themselves out to Plaintiff and Class Members as being knowledgeable concerning the labor and employment laws of California.

110. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and/or gain a greater foothold in the marketplace.

111. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

112. As a result of the unfair and unlawful business practices of Defendants as alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution in an amount to be shown according to proof at trial.

113. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 *ET SEQ.* ("PAGA")

114. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

115. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

116. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

117. Defendants' conduct violates numerous Wage Order and Labor Code sections, including, but not limited to, the following:

- a. violation of Labor Code §§ 201, 202, 203, 204, 210, 246, 510, 1182.12, 1194, 1197, and 1198 for failure to timely pay all earned wages

(including minimum wage, sick pay, and overtime wages) at the correct rate owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

- b. violation of Labor Code §§ 221, 223, and 225.5, for making unlawful deductions from wages paid to Plaintiff and other aggrieved employees as herein alleged;
- c. violation of Labor Code § 226.2, for failing to properly pay for non-productive time worked by Plaintiff and other aggrieved employees as herein alleged;
- d. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- e. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- f. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
- g. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees; and
- h. violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and other aggrieved employees for necessary business expenses as herein alleged.

118. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

119. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

120. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

121. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

On Plaintiff's own behalf and on behalf of all others similarly situated, Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;
2. For appointment of Ezequiel Ramirez Rodriguez as class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,

1 or fraudulent and, therefore, constituting unfair competition under Business and Professions
2 Code §§ 17200, *et seq.*;

3 12. For pre-judgment interest;

4 13. For civil penalties;

5 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
6 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
7 226(e), 1194, and 2698 *et seq.*; and

8 15. For such other relief as the Court deems just and proper.

9
10 Dated: June 27, 2024

AEGIS LAW FIRM, PC

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12 By: 
13 Jessica L. Campbell
14 Attorneys for Plaintiff
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