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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN DIEGO**

16 ARMANDO JIMENEZ, individually on behalf
of and all others similarly situated;

17 Plaintiffs,

18 vs.

19 REYES HOLDINGS, LLC, a Delaware limited
20 liability company; CREST BEVERAGE, LLC,
21 a Delaware limited liability company; and
DOES 1 through 10, inclusive,

22 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/24/2020 at 12:11:00 PM

Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

Case No. 37-2019-00051577-CU-OE-CTL

CLASS ACTION

***SECOND AMENDED COMPLAINT
FOR DAMAGES AND RECOVERY
OF CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") AND
RESTITUTION***

1. Failure to Pay All Wages
2. Failure to Pay Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Failure to Provide Accurate Itemized Wage Statements
6. Waiting Time Penalties
7. Failure to Reimburse Business Expenses
8. Unfair Business Practices

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9. FLSA Collective Action
10. Civil Penalties Under the PAGA For Failure to Pay All Wages, Including Overtime Wages
11. Civil Penalties Under the PAGA For Failure to Provide Meal Periods
12. Civil Penalties Under the PAGA For Failure to Provide Rest Periods
13. Civil Penalties Under the PAGA For Failure to Provide Accurate Itemized Wage Statements
14. Civil Penalties Under the PAGA For Failure to Timely Pay All Wages Due Upon Termination of Employment
15. Civil Penalties Under the PAGA For Failure to Reimburse Business Expenses
16. Civil Penalties Under the PAGA For Failure to Maintain Accurate Employment Records

DEMAND FOR JURY TRIAL

1 Plaintiff ARMANDO JIMENEZ (“Plaintiff”), individually, on behalf of others similarly
2 situated, and as a representative of the State of California and the California Labor and
3 Workforce Development Agency (“LWDA”), alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff bring this proposed class action against REYES HOLDINGS, LLC,
6 CREST BEVERAGE, LLC, and DOES 1 through 10, inclusive, (“Defendants”) for all unpaid
7 wages, overtime (at the regular rate of pay), meal and rest period premiums (at the regular rate
8 of pay), wage statement violations, waiting time penalties, unreimbursed business expenses, and
9 unfair business practices, for the four years before this action was filed. (“Class Period”).

10 2. Plaintiff gave notice of these claims to the California Labor and Workforce
11 Development Agency (“LWDA”). There was no LWDA intervention within 65 days of that
12 notice, and no notice of cure by Defendants. Plaintiff asserts claims for civil penalties as a
13 representative of the State of California, as authorized by the Private Attorneys General Act
14 (“PAGA”), Labor Code sections 2698, *et seq.*, and to the extent permitted by law, on behalf of
15 the aggrieved employees who held the positions identified and suffered one or more of the
16 violations alleged. Labor Code § 2699.3(a)(2)(C). A true and correct copy of the September 3,
17 2019 Notice showing compliance with section 2699.3 is attached as **Exhibit 1** and demonstrates
18 Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of
19 the State of California and the LWDA and as a private attorney general.

20 3. Pursuant to Cal Labor Code section 2698, *et seq.*, Plaintiff seeks to represent all
21 current and former non-exempt employees of Defendants who suffered one or more of the
22 alleged violations (“aggrieved employees”) as described herein during the applicable limitations
23 period for the time period covered by the PAGA (which is defined as any time from one year
24 and 65 days prior to the commencement of this action until the commencement of trial in the
25 matter). The applicable limitations period is referred herein as “the PAGA Period.”

26 **I. JURISDICTION AND VENUE**

27 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
28 Civil Procedure section 395. Defendants conduct business in San Diego County, and each

1 Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful
2 acts alleged have a direct effect on Plaintiff and those aggrieved or otherwise similarly situated
3 within the State of California and San Diego County. The California Superior Court also has
4 jurisdiction in this matter because the individual members of the classes are under the seventy-
5 five thousand-dollar (\$75,000.00) jurisdictional threshold for federal jurisdiction and the
6 aggregate claim is under the five million-dollar (\$5,000,000.00) threshold of the Class Action
7 Fairness Act of 2005 (“CAFA”), 28 U.S.C. section 1332.

8 5. There is no federal question at issue, as the issues are based solely on California
9 statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Civil
10 Code, and Business and Professions Code.

11 6. Over two-third or more of the proposed class are or were at all relevant times, by
12 definition, residents of the State of California and Plaintiff alleges this matter is a local case or
13 controversy not subject to CAFA.

14 7. Further as a representative action under the PAGA, the matter is not subject to
15 removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to
16 federal jurisdiction.

17 **II. PARTIES**

18 8. ARMANDO JIMENEZ is a resident of California. From about April 2017
19 through May 2019, he was employed with REYES HOLDINGS, LLC and CREST
20 BEVERAGE, LLC, first as a delivery driver and later in a sales route relief position, providing
21 sales, pick-up, distribution, and delivery services in California.

22 9. REYES HOLDINGS, LLC and CREST BEVERAGE, LLC (“Defendants”) are
23 limited liability companies incorporated in Delaware. Based on employment records and
24 policies and control over Plaintiff, Defendants employed Plaintiff and putative class members
25 throughout California, including through the Reyes Beer Division, which operates, manages, or
26 controls CREST BEVERAGE, LLC, and other California beverage distributors.

27 10. The true names and capacities, whether individual, corporate, associate, or
28 otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who

1 sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is
2 informed and believes, and alleges, each DOE Defendant is legally responsible in some manner
3 for the unlawful acts alleged. Plaintiff will seek leave to amend this Complaint to reflect the
4 true names and capacities of DOE Defendants when they become known.

5 11. Plaintiff is informed and believes each Defendant acted in all respects pertinent
6 to this action as the agent of the other Defendants, carried out a joint scheme, plan or policy,
7 and the acts of each Defendant are legally attributable to the other Defendants.

8 **III. GENERAL ALLEGATIONS**

9 12. Plaintiff re-alleges all preceding paragraphs.

10 13. Defendants contract with and buy products from national and international
11 companies. Defendants sell beer, wine, and other beverages made in the United States,
12 including states outside of California. These beverages are delivered from out-of-state to
13 Defendants' warehouses and held for a short period before delivery to Defendants' customers in
14 California.

15 14. Plaintiff was paid as an hourly, non-exempt employee during his employment
16 with Defendants. Plaintiff and other similarly-situated and aggrieved employees were engaged
17 in the movement of goods in interstate commerce through participation in the continuation of
18 the movement of interstate goods to their destinations, including through delivering of goods.

19 15. Plaintiff and other similarly-situated and aggrieved persons earned compensation
20 in addition to their hourly wages, including "Incentive Pay\$," during their employment.
21 Defendants excluded the additional compensation from Plaintiff's regular rate of pay for
22 purposes of paying overtime wages, meal and rest period premiums, and other amounts based
23 on the regular rate of pay.

24 16. Plaintiff routinely worked more than 40 hours per workweek and 8 hours per
25 workday during the Class Period.

26 17. Defendants scheduled Plaintiff and other similarly-situated and aggrieved
27 employees for numerous time-consuming deliveries and lengthy delivery routes which
28 prevented completion of required deliveries within eight hours if meal or rest periods were

1 taken. If all scheduled daily deliveries were not completed, putative Class Members were
2 subject to discipline. As a result, Plaintiff and putative Class Members were routinely prevented
3 from taking timely, uninterrupted meal and rest periods, of the required duration. Plaintiff and
4 the putative Class remained subject to Defendants' control during meal and rest periods, and
5 were often interrupted. Defendants maintained a policy requiring employees to clock out for
6 meal periods, whether taken or not.

7 18. Defendants maintained a policy requiring employees to complete routes before
8 specific times to accommodate demands and restrictions of their warehouse operations. As a
9 result, Plaintiff and other Class Members and aggrieved employees were deprived of the
10 opportunity to take all required meal and rest periods each day and forced to work off the clock
11 to complete necessary work.

12 19. Plaintiff and other similarly-situated and aggrieved employees were not paid
13 premium wages for non-compliant meal or rest periods.

14 20. Throughout the putative Class Period, Plaintiff and other similarly-situated and
15 aggrieved employees were not reimbursed for all business expenses. During the latter part of
16 Plaintiff's employment, he and other similarly-situated and aggrieved employees used personal
17 vehicles and were reimbursed at a fraction of the IRS mileage rate plus a stipend, but the
18 amounts reimbursed were less than the total cost of Plaintiff's business-related use of his
19 personal vehicle, considering expenses such as gas, oil, repairs, depreciation, insurance, and
20 other losses and expenditures.

21 21. Defendants' policy and practice of not paying all wages and premiums owed to
22 Plaintiff and other similarly-situated and aggrieved employees resulted in Defendants failing to
23 timely pay all final wages owed at the termination of employment.

24 22. Because of Defendants' failure to pay for all hours worked at the appropriate rate
25 and all meal and rest period premiums, each wage statement inaccurately stated hours worked,
26 gross and net wages earned and paid, all hourly rates in effect, and the corresponding number of
27 hours worked at each hourly rate on each wage statement.

28 23. Defendants' wage statements for Plaintiff and the putative Class list multiple

1 “overtime” lines, although all lines do not include an overtime rate, or all overtime hours
2 worked.

3 24. As a result of Defendants’ other violations, they failed to keep all required
4 records for Plaintiff and the putative Class and violated Labor Code section 1174 applicable.

5 **IV. CLASS ACTION ALLEGATIONS**

6 25. Plaintiff seeks to represent a Plaintiff Class defined as:

7 All persons employed by Defendants as non-exempt employees engaged in the
8 movement of goods in interstate commerce at any time starting four years from
the filing of this Complaint.

9 26. Plaintiff seeks to certify a subclass defined as:

10 **Unpaid Wage Subclass**

11 All Plaintiff Class Members not paid all regular wages for all hours worked.

12 27. Plaintiff seeks to certify a subclass defined as:

13 **Overtime Subclass**

14 All Plaintiff Class Members not paid all overtime wages for all hours worked
15 over eight per day or forty per week.

16 28. Plaintiff seeks to certify a subclass defined as:

17 **Meal Period Subclass**

18 All Plaintiff Class Members who worked shifts of five hours or more without a
19 duty-free meal period of at least thirty (30) minutes, and were not compensated
one hour’s pay at the regular rate for each of those days.

20 29. Plaintiff seeks to certify a subclass defined as:

21 **Rest Period Subclass**

22 All Plaintiff Class Members who worked shifts of four hours or a major
23 fraction thereof without being authorized or permitted to receive a rest
24 period of at least 10 minutes and were not compensated one hour’s pay
at the regular rate for each of those days.

25 30. Plaintiff seeks to certify a subclass defined as:

26 **Waiting Time Subclass**

27 All Plaintiff Class Members to whom Defendants failed to pay all wages due to
28 them upon termination or resignation under Labor Code, §§ 201-203.

1 31. Plaintiff seeks to certify a subclass defined as:

2 **Wage Statement Subclass**

3 All Plaintiff Class Members to whom Defendants improperly failed to provide
4 accurate itemized wage statements under Labor Code § 226(b).

5 32. Plaintiff seeks to certify a subclass defined as:

6 **Reimbursement Subclass**

7 All Plaintiff Class Members who used personal vehicles for Defendants'
8 business purposes, but were not reimbursed for all actual costs.

9 33. Plaintiff seeks to certify a subclass of employees defined as follows:

10 **UCL Subclass**

11 All members of the Unpaid Wage, Overtime, Meal Period, Rest Period, and
12 Reimbursement Subclasses.

13 34. Plaintiff reserves the right to modify the Class description or further divide it
14 into subclasses or limit it to particular issues. California Rules of Court, Rule 3.765(b).

15 35. This action has been brought and may be maintained as a class action because
16 there is a well-defined common interest of many persons and it is impractical to bring them all
17 before the court. Code of Civil Procedure § 382.

18 **A. Ascertainable Class**

19 36. The proposed Class and Subclasses are ascertainable because they can be
20 identified and located using Defendants' payroll and personnel records.

21 **B. Numerosity**

22 37. The precise number has not been determined, but Plaintiff is informed and
23 believes there are over 350 putative Class Members in California, including San Diego County,
24 affected by Defendants' policies. Joinder of all proposed Class members is not practicable.

25 **C. Commonality**

26 38. There are questions of law and fact common to the Class which predominate
27 over any questions affecting only individual Class Members. Common questions are set forth
28 below and in causes of action throughout this Complaint.

1 **D. Typicality**

2 39. The claims of the named Plaintiff are typical of the claims of the proposed
3 Plaintiff Class. Plaintiff and all members of the Class and Subclasses sustained injuries and
4 damages arising out of and caused by the Defendants' common course of conduct in violation
5 of laws, regulations that have the force and effect of law, and statutes as alleged.

6 **E. Adequacy of Representation**

7 40. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the Class. Proposed Class Counsel, Cohelan Khoury & Singer and Ferraro
9 Employment Law, Inc., who represent Plaintiff, are competent and experienced in litigating
10 employment class actions. Plaintiff understands his obligation to faithfully assist in the
11 preparation of the case and to make decisions in the best interests of the putative class.

12 **F. Superiority of Class Action**

13 41. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Each Class Member has been damaged and is entitled to
15 recovery by Defendants' illegal policies and practices, and a Class action allows them to litigate
16 their claims in the most efficient and economical manner for the parties and judicial system.
17 There are no likely difficulties managing this action that preclude its maintenance as a class
18 action.

19 42. The predominating common questions of law and fact include:

- 20 a. Whether Defendants violated the law by failing to properly calculate Plaintiff
21 Class Members' regular rate of pay;
- 22 b. Whether Defendants violated California law by failing to properly compensate
23 Plaintiff Class Members for all overtime hours;
- 24 c. Whether the Plaintiff Class is entitled to penalties under Section 226;
- 25 d. Whether the Plaintiff Class is entitled to waiting time penalties under Section
26 203;
- 27 e. Whether Defendants violated Labor Code sections 203, 226, and 1194, and IWC
28 Wage Orders, and whether that violates fundamental public policy;

1 g. Whether Defendants are liable for equitable relief pursuant to Business and
2 Professions Code sections 17200, *et seq.*

3 **FLSA COLLECTIVE ACTION ALLEGATIONS**

4 43. Plaintiff incorporates the preceding paragraphs of this Complaint.

5 44. Plaintiff brings the Ninth Cause of Action for violations of FLSA Section 16(b),
6 29 U.S.C. § 216(b), on behalf of a Collective Class, which is defined as:

7 All persons employed by Defendants as non-exempt employees engaged
8 in the movement of goods in interstate commerce at any time starting
9 three years from the filing of this Complaint.

10 45. At all relevant times, Plaintiff and members of the Collective Class have been
11 similarly situated, with similar pay provisions, and been subject to Defendants' common
12 practices, policies and procedures of willfully failing to pay legally required time-and-a-half
13 rates for work in excess of 40 hours per workweek, including by failing to include all
14 compensation to determine the regular rate of pay. Plaintiff's claims are similar to those of the
15 other members of the Collective Class.

16 46. The Ninth Cause of Action is properly brought and maintained as an opt-in
17 collective action. FLSA, 29 U.S.C. 216(b). Collective Class member names and addresses are
18 readily available from Defendants and can be provided notice by first class mail to the last
19 address known to their employer.

20 47. Plaintiff Jose Armando Jimenez's signed consent is attached as Exhibit 2.
21 Plaintiff is informed, believes and alleges many other members of the Collective Class will sign
22 and file consents to join this lawsuit if given the opportunity to do so.

23 **V. CAUSES OF ACTION**
24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY ALL WAGES**
(AGAINST ALL DEFENDANTS)

26 48. Plaintiff incorporates the preceding paragraphs of this Complaint.

27 49. By their failure to pay all wages for hours Plaintiff and putative Class Members
28 were under their control, including time when not clocked in, Defendants failed to pay

1 minimum, regular, and overtime wages, and violated Labor Code section 1194, and IWC Wage
2 Orders, including, No. 9-2001.

3 50. Local minimum wage ordinances, including but not limited to San Diego
4 Municipal Code section 39.0107, provide for higher minimum wage rates that must be paid to
5 employees for all hours worked in those locales where each local ordinance is in effect.

6 51. Defendants' unlawful acts deprived Plaintiff and putative Class Members of
7 minimum, regular, and overtime wages in amounts to be determined at trial, and they are
8 entitled to recover these amounts, along with liquidated damages for unpaid minimum wages
9 (1194.2), and interest, attorneys' fees, and costs.

10 **SECOND CAUSE OF ACTION**
11 **FAILURE TO PAY OVERTIME WAGES**
12 **(AGAINST ALL DEFENDANTS)**

12 52. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 53. By their failure to record all time Plaintiff and putative Class Members were
14 under their control, and by their failure to correctly calculate the regular rate of pay, Defendants
15 failed to pay all overtime wages earned, for hours worked over eight (8) hours in one day or
16 forty (40) hours in one week, and violated provisions of Labor Code section 1194 and IWC
17 Wage Orders, including No. 9-2001.

18 54. Defendants' unlawful acts deprived Plaintiff and putative Class Members of
19 overtime wages in amounts to be determined at trial, and they are entitled to recover these
20 amounts, along with interest, attorneys' fees, and costs.

21 **THIRD CAUSE OF ACTION**
22 **MEAL PERIOD VIOLATIONS**
23 **(AGAINST ALL DEFENDANTS)**

23 55. Plaintiff incorporates the preceding paragraphs of this Complaint.

24 56. By failing to provide duty-free meal periods of at least thirty (30) minutes for
25 shifts of five hours or more, which began before the end of the fifth hour of work, and failing to
26 pay such employees premium wages of one (1) hour of pay at their regular rate of compensation
27 for each workday the meal period was not provided, Defendants willfully violated the
28 provisions of Labor Code sections 226.7 and 512, and IWC Wage Orders, including No. 9-

1 2001.

2 57. By failing to correctly calculate the regular rate of pay, by failing to include all
3 compensation earned during the pay period, Defendants failed to pay all premium wages owed.

4 58. Defendants' unlawful acts deprived Plaintiff and putative Class Members of
5 premium wages and/or other compensation in amounts to be determined at trial, and they are
6 entitled to recover such amounts, plus interest, attorneys' fees, and costs.

7 **FOURTH CAUSE OF ACTION**
8 **REST PERIOD VIOLATIONS**
9 **(AGAINST ALL DEFENDANTS)**

9 59. Plaintiff incorporates the preceding paragraphs of this Complaint.

10 60. By failing to authorize and permit Plaintiff to receive a rest period of at least 10
11 minutes on for every four (4) hours or major fraction thereof worked per day, and by failing to
12 provide premium wages at the regular rate of pay when these periods were not permitted or
13 authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC
14 Wage Orders, including No. 9-2001.

15 61. Defendants' unlawful acts deprived Plaintiff putative Class members of
16 premium wages and other compensation in amounts to be determined at trial, and they are
17 entitled to recover such amounts, plus interest, attorneys' fees, and costs.

18 **FIFTH CAUSE OF ACTION**
19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
20 **(AGAINST ALL DEFENDANTS)**

20 62. Plaintiff incorporates all preceding paragraphs of this Complaint.

21 63. Defendants must itemize in wage statements all deductions from wages and
22 accurately report, among other things, total hours worked and all hourly wage rates earned for
23 those hours by Plaintiff and putative Class Members. Defendants knowingly and intentionally
24 failed to comply with Labor Code section 226(a) because, among other reasons, wage
25 statements provided to Plaintiff and Wage Statement Subclass members failed to accurately
26 state all hours worked, and all hourly rates earned.

27 64. As a consequence of Defendants' knowing and intentional failure to comply with
28 Labor Code section 226(a), Plaintiff and the members of the Wage Statement Subclass are

1 entitled to actual damages or penalties not to exceed \$4,000 for each employee pursuant to
2 Labor Code section 226(b), together with interest and attorneys' fees and costs.

3 **SIXTH CAUSE OF ACTION**
4 **WAITING TIME PENALTIES**
5 **(AGAINST ALL DEFENDANTS)**

6 65. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 66. Defendants are required to pay employees all wages due within the time required
8 by law. Defendants had a consistent and uniform policy, practice, and procedure of willfully
9 failing to pay former employees' wages. If an employer willfully fails to timely pay such wages
10 the employer must continue to pay the employee's wages until all wages are paid in full or an
11 action is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

12 67. Members of the Waiting Time Subclass are no longer employed by Defendants.

13 68. Defendants willfully failed to pay Waiting Time Subclass Members the sum due
14 at the time of their termination or within seventy-two (72) hours of their resignation, and failed
15 to pay those sums for thirty (30) days thereafter.

16 69. Defendants' willful failure to pay wages to the Waiting Time Subclass Members
17 violates Labor Code section 203 because Defendants knew wages were due to the Waiting Time
18 Subclass Members, but failed to pay them.

19 **SEVENTH CAUSE OF ACTION**
20 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
21 **(AGAINST ALL DEFENDANTS)**

22 70. Plaintiff incorporates the preceding paragraphs of this Complaint.

23 71. Plaintiff and the members of the Class he seeks to represent incurred expenses in
24 the performance of their job duties, including by the use of personal vehicles. Plaintiff was not
25 fully reimbursed for incurring these necessary and reasonable business expenses.

26 72. Defendants had a policy of regularly and consistently refusing to fully reimburse
27 Plaintiff and other similarly-situated Class Members for such expenses, in violation of
28 California Labor Code section 2802.

73. As a result of Defendants' unlawful acts, Plaintiff and members of the
Reimbursement Subclass sustained damages, including loss of expense reimbursements, in

1 amounts to be determined at trial, plus interest, and attorneys' fees and costs.

2 **EIGHTH CAUSE OF ACTION**
3 **UNFAIR BUSINESS PRACTICES**
4 **(AGAINST ALL DEFENDANTS)**

4 74. Plaintiff incorporates the preceding paragraphs of this Complaint.

5 75. At all relevant times, Defendants engaged in unlawful and unfair business
6 practices in violation of Business and Professions Code sections 17200, et seq. through
7 common and systemic employment policies and practices which failed to provide the
8 employment protections, wages, premiums, reimbursements, and other funds and property owed
9 to Plaintiff and the UCL Subclass, as alleged throughout this Complaint, in violation of the
10 Labor Code and IWC Wage Orders.

11 76. Defendants' business practices deprived Plaintiff and the UCL Subclass of
12 compensation, reimbursements, and other funds they are legally entitled to, constitute unlawful
13 and unfair business practices, provide an unfair advantage to Defendants over their competitors
14 who comply with wage and hour and employment laws, and unjustly enrich them.

15 77. Because Plaintiff was subject to Defendants' unfair and unlawful conduct, as
16 alleged throughout this Complaint, Plaintiff, as an individual and on behalf of the Class
17 Members, seeks restitution of all monies and property withheld, acquired or converted by
18 Defendants pursuant to Business and Professions Code sections 17202, 17203, 17204, and
19 17208.

20 78. Plaintiff and Class Members are entitled to an injunction, restitution, and other
21 equitable relief against such unlawful practices, including the return all funds over which
22 Plaintiff and Class Members have an ownership interest and to prevent future damages pursuant
23 to Business and Professions Code sections 17200, et seq.

24 **NINTH CAUSE OF ACTION**
25 **UNFAIR BUSINESS PRACTICES**
26 **(AGAINST ALL DEFENDANTS)**

26 79. Plaintiff incorporates the preceding paragraphs of this Complaint.

27 80. At all relevant times, each Defendant has been, and continues to be, an
28 "employer" engaged in "interstate commerce" within the meaning of FLSA, 29 U.S.C. § 203,

1 and each Defendant has employed, and continues to employ the Covered Employees as
2 “employee[s]” within the meaning of the FLSA.

3 81. Defendants employed Plaintiff and the FLSA Covered Employees to work, and
4 they did work, in excess of forty (40) hours per week.

5 82. Defendants failed to pay Plaintiff and the FLSA Covered Employees for work in
6 excess of forty (40) hours per week at one and one half times the regular rate of pay for each
7 Employee.

8 83. Plaintiff seeks judgment against Defendants on his own behalf, and on behalf of
9 each FLSA collective employee, for all unpaid wages, including overtime wages owed by
10 Defendants, together with an award of an additional equal amount as liquidated damages, and
11 costs, interest, and reasonable attorneys’ fees.

12 **TENTH CAUSE OF ACTION**
13 **PAGA PENALTIES FOR FAILURE TO PAY ALL WAGES**
14 **(AGAINST ALL DEFENDANTS)**

15 84. Plaintiff incorporates the preceding paragraphs of this Complaint.

16 85. Labor Code section 1194(a) provides: “(a) Notwithstanding any agreement to
17 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
18 overtime compensation applicable to the employee is entitled to recover in a civil action the
19 unpaid balance of the full amount of this minimum wage or overtime compensation, including
20 interest thereon, reasonable attorney’s fees, and costs of suit.”

21 86. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
22 law, any provision of this code that provides for a civil penalty to be assessed and collected by
23 the Labor and Workforce Development Agency or any of its departments, divisions,
24 commissions, boards, agencies, or employees, for a violation of this code, may, as an
25 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
26 himself or herself and other current or former employees pursuant to the procedures specified in
27 Section 2699.3.”

28 87. Labor Code section 2699(f)(2) states: “For all provisions of this code except
those for which a civil penalty is specifically provided, there is established a civil penalty for a

1 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
2 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
3 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
4 each aggrieved employee per pay period for each subsequent violation.”

5 88. Labor Code section 2699.5 provides that “provisions of subdivision (a) of
6 Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§]
7 ...1194, 1194.1” and allow for recovery of civil penalties pursuant to the PAGA.

8 89. During all or a substantial part of PAGA Period, Defendants failed to timely pay
9 aggrieved employees all minimum, regular, and overtime wages, including time when not
10 clocked in, and at the correct rate of pay each pay period and upon separation of employment.
11 Defendants have thus violated Labor Code sections 201 through 204, 210, 510, 558, 1182.12,
12 1194, 1194.2, 1197, 1197.1, 1197.5, 1198 and the IWC Wage Orders, along with local
13 minimum wage ordinances including San Diego Municipal Code section 39.0107.

14 90. As a result of Defendants’ failure to pay all minimum, regular, and overtime
15 wages, and at the correct rate of pay, Defendants, and each of them, are liable for civil penalties
16 within the applicable limitations period of Labor Code section 2699(f)(2) for violations of
17 Labor Code sections 510, 1194, and 1194.2, in the amount of \$100 for each aggrieved
18 employee per pay period for the initial violation and \$200 for each subsequent violation, for
19 Defendants’ failure to pay Plaintiff and other aggrieved employees minimum or overtime
20 wages. Defendants are further liable pursuant to Labor Code section 210 for the foregoing
21 violations in the amount of \$100 for the initial violation per employee per pay period and \$200
22 for each subsequent violation, plus 25 percent of the amount unlawfully withheld; pursuant to
23 Labor Code section 558 for \$50 for the initial violation per employee per pay period and \$100
24 for each subsequent violation per pay period; pursuant to Labor Code section 1197.1 in the
25 amount of \$100 for the initial violation per employee per pay period and \$250 for each
26 subsequent violation, in addition to other recoverable penalties under Labor Code.

27 91. As a proximate result of the aforementioned violations, Plaintiff has been
28 damaged in an amount according to proof at time of trial, but in an amount in excess of the

1 jurisdiction of this Court. Therefore, pursuant to Labor Code sections 1194, 1194.2, and 1197.1,
2 Plaintiff is entitled to recover, as a civil penalty and pursuant to the PAGA, the unpaid balance
3 of wages owed, liquidated damages in an amount equal to the wages unlawfully unpaid,
4 restitution of wages, plus interest, penalties, attorney's fees, expenses, and costs of suit.

5 92. For purposes of this action, Plaintiff, as a representative of the State of
6 California, seeks to invoke Labor Code section 1195.5 which states: "The Division of Labor
7 Standards Enforcement shall determine, upon request, whether the wages of employees, which
8 exceed the minimum wages fixed by the commission, have been correctly computed and paid.
9 For this purpose, the division may examine the books, reports, contracts, payrolls and other
10 documents of the employer relative to the employment of employees."

11 **ELEVENTH CAUSE OF ACTION**
12 **PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS**
13 **(AGAINST ALL DEFENDANTS)**

14 93. Plaintiff incorporates the preceding paragraphs of this Complaint.

15 94. "An employer shall not require an employee to work during a meal or rest or
16 recovery period mandated pursuant to an applicable statute, or applicable regulation, standard,
17 or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards
18 Board, or the Division of Occupational Safety and Health." Labor Code section 226.7(b)(c).

19 95. "If an employer fails to provide an employee a meal or rest or recovery period in
20 accordance with a state law...the employer shall pay the employee one additional hour of pay at
21 the employee's regular rate of compensation for each workday that the meal or rest or recovery
22 period is not provided." Labor Code section 226.7(c).

23 96. By failing to provide compliant meal periods, and failing to pay employees one
24 hour of pay at their regular rate of pay for each workday a meal period was not provided,
25 Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Order 9-2001.

26 97. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
27 Labor Code for which there is no corresponding civil penalty, including Labor Code section
28 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
for each underpaid employee. Labor Code § 2699(f)(2).

1 98. Plaintiff, as a representative of the general public, seeks to recover all Labor
2 Code section 2699(f)(2) penalties for each Labor Code section 226.7 or 512(a) violation,
3 according to proof, as to those penalties otherwise only available in public agency enforcement
4 actions.

5 **TWELFTH CAUSE OF ACTION**
6 **PAGA PENALTIES FOR FAILURE TO PROVIDE REST PERIODS**
7 **(AGAINST ALL DEFENDANTS)**

8 99. Plaintiff incorporates the preceding paragraphs of this Complaint.

9 100. By failing to authorize and permit Plaintiff to receive a rest period of at least 10
10 minutes for every four (4) hours or major fraction thereof worked per day, and by failing to
11 provide premium wages at the regular rate of pay when these periods were not permitted or
12 authorized, Defendants willfully violated Labor Code section 226.7 and Wage Order 9-2001.

13 101. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
14 Labor Code for which there is no corresponding civil penalty, including Labor Code section
15 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
16 for each underpaid employee. Labor Code § 2699(f)(2).

17 102. Plaintiff, as a representative of the general public, seeks to recover all Labor
18 Code section 2699(f)(2) penalties for each Labor Code section 226.7 violation, according to
19 proof, as to those penalties otherwise only available in public agency enforcement actions.

20 **THIRTEENTH CAUSE OF ACTION**
21 **PAGA PENALTIES FOR FAILURE TO PROVIDE**
22 **ACCURATE ITEMIZED WAGE STATEMENTS**
23 **(AGAINST ALL DEFENDANTS)**

24 103. Plaintiff incorporates the preceding paragraphs of this Complaint.

25 104. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at
26 the time of each payment of wages, furnish each of his or her employees... an accurate itemized
27 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
28 (5) net wages earned... ..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...”

105. Due to Defendants’ failure to pay for all hours worked at the appropriate hourly
rate, and all meal and rest period premiums as required by the Labor Code, the wages listed on

1 each wage statement provided to Plaintiff and other aggrieved employees were misstated and
2 violated Sections 226(a)(1), (2), (5), and (9). Defendants' actions were intentional and willful.

3 106. Plaintiff has satisfied all prerequisites to serve as a representative of the general
4 public to enforce California's labor laws, and the penalty provisions identified in Labor Code
5 section 226.3. Plaintiff, as a representative of the people of the State of California, seeks all
6 penalties otherwise capable of being collected by the Division of Labor Standards Enforcement
7 ("DLSE"). Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged
8 violation of Labor Code section 226.

9 107. Labor Code section 226.3 provides for civil penalties for violations of Section
10 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

11 108. Defendants are further liable for violation of Labor Code section 226 pursuant to
12 Labor Code section to Labor Code section Labor Code section 2699(f)(2), which provides for
13 civil penalties for violations of the Labor Code for which there is no corresponding civil
14 penalty, including Labor Code section 226. The civil penalty is \$100 for the initial violation and
15 \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

16 109. Plaintiff, as a representative of the general public, seeks to recover all Labor
17 Code section 2699(f)(2) penalties for each Labor Code section 226 violation, according to
18 proof, as to those penalties otherwise only available in public agency enforcement actions.

19 **FOURTEENTH CAUSE OF ACTION**
20 **PAGA PENALTIES FOR FAILURE TO TIMELY PAY WAGES AT SEPARATION**
21 **(AGAINST ALL DEFENDANTS)**

22 110. Plaintiff incorporates the preceding paragraphs of this Complaint.

23 111. Labor Code sections 201-203 require employers to pay wages earned by
24 employees within strict time requirements. Defendants had a policy, practice, and procedure of
25 willfully failing to pay the earned wages of Defendants' former employees. If an employer
26 willfully fails to timely and fully pay all final wages the employer must, as a penalty, continue
27 to pay an employee's wages for 30 days, or until the back wages are paid in full.

28 112. Defendants failed to pay Plaintiff and other aggrieved employees who ended
their employment with the Defendant all wages, including minimum and overtime wages, and

1 meal and rest period premium wages, as required by Labor Code sections 201-203.

2 113. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
3 Labor Code for which there is no corresponding civil penalty, including Labor Code section
4 203. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
5 for each underpaid employee. Labor Code § 2699(f)(2).

6 114. Plaintiff, as a representative of the general public, seeks to recover all Labor
7 Code section 2699(f)(2) penalties for each Labor Code section 201-203 violation, according to
8 proof, as to those penalties otherwise only available in public agency enforcement actions.

9 **FIFTEENTH CAUSE OF ACTION**
10 **PAGA PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**
11 **(AGAINST ALL DEFENDANTS)**

12 115. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 116. “An employer shall indemnify his or her employee for all necessary
14 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
15 her duties, obedience to the directions of the employer...” Labor Code section 2802.

16 117. For purposes of this section, the term “necessary expenditures or losses” shall
17 include all reasonable costs, including, but not limited to, attorney’s fees incurred by the
18 employee enforcing the rights granted by this section.

19 118. This statutory right cannot be waived. Labor Code section 2804.

20 119. Labor Code section 2699(f)(2) states: “For all provisions of this code except
21 those for which a civil penalty is specifically provided, there is established a civil penalty for a
22 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
23 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
24 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
25 each aggrieved employee per pay period for each subsequent violation.”

26 120. Aggrieved employees are entitled to pursue civil penalties under the PAGA for
27 violations of Labor Code section 2802. Labor Code § 2699.5.

28 121. Because there is no established civil penalty for violations of Section 2802,
Labor Code section 2699(f)(2) provides the appropriate civil penalty, as Defendants employed

1 more than one person during the statutory period, and still employ more than one person.

2 122. Defendants violated the above statutes throughout the PAGA period by failing to
3 fully reimburse Plaintiff and other aggrieved employees for necessary expenses incurred in
4 direct consequence of discharging their duties, including failing to reimburse for all expenses
5 incurred by Plaintiff and aggrieved employees for the use of personal vehicles for business-
6 related purposes.

7 123. Plaintiff, as a representative of the general public, seeks to recover all Labor
8 Code section 2699(f)(2) penalties for each Labor Code section 2802 violation, according to
9 proof, as to those penalties otherwise only available in public agency enforcement actions.

10 **SIXTEENTH CAUSE OF ACTION**
11 **PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
12 **(AGAINST ALL DEFENDANTS)**

12 124. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 125. Employers must maintain accurate records of all hours worked and wages paid at
14 the appropriate rate. Labor Code section 1174. Defendants violated this section by failing to
15 maintain accurate records showing hours worked and wages owed and paid. Defendants are
16 liable to Plaintiff and the aggrieved employees in the amount of \$500 per person. Section 1174.5.

17 **VI. PRAYER FOR RELIEF**

18 Plaintiff prays for judgment as follows:

- 19 A. For certification of this action as a class action;
- 20 B. For appointment of Plaintiff as the representative of the Class;
- 21 C. For appointment of Plaintiff's counsel as Class Counsel;
- 22 D. For injunctive relief;
- 23 E. For compensatory damages in amounts according to proof;
- 24 F. For all interest accrued;
- 25 G. For disgorgement of all amounts wrongfully obtained;
- 26 H. All overtime wages, and interest, and an equal amount as liquidated damages
27 pursuant to the FLSA, 29 U.S.C. § 207, et seq;
- 28 I. This action be maintained as a PAGA Representative Action, and Plaintiff and

1 his counsel be provided with enforcement capability as if the action were brought by the DLSE;

2 J. For recovery of civil penalties under Labor Code section 2699 for failure to pay
3 all minimum and overtime wages owed pursuant to Section 1194, according to proof;

4 K. For recovery of civil penalties under Labor Code sections 558 and 1197.1 for
5 failing to pay minimum and overtime wages for all hours worked;

6 L. For recovery of civil penalties under Labor Code section 2699 for failure to
7 provide meal periods compliant with Labor Code sections 226.7 and 512, according to proof;

8 M. For recovery of civil penalties under Labor Code section 2699 for failure to pay
9 all meal period premiums due pursuant to Labor Code section 226.7, according to proof;

10 N. For recovery of civil penalties under Labor Code section 2699 for failure to
11 authorize and permit rest periods, pursuant to Labor Code section 226.7(a), according to proof;

12 O. For recovery of civil penalties under Labor Code section 2699 for failure to pay
13 all rest period premiums due pursuant to Labor Code section 226.7(b), according to proof;

14 P. For recovery of civil penalties under Labor Code section 2699 for failing to
15 provide accurate itemized wage statements pursuant to Labor Code sections 226 and 226.3,
16 according to proof;

17 Q. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
18 timely pay all final wages (and waiting time penalties) on time each pay period or upon
19 termination of employment pursuant to Labor Code sections 201-203;

20 R. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
21 pay statutory waiting time penalties due pursuant to Labor Code section 203;

22 S. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
23 reimburse all necessary expenditures pursuant to Labor Code section 2802;

24 T. For recovery of civil penalties under Labor Code section 2699(f)(2) for violation
25 of Labor Code section 2804;

26 U. For recovery of civil penalties under Labor Code section 1174.5 for violations of
27 Labor Code section 1174;

28 V. For all applicable civil penalties to be distributed as provided by Labor Code

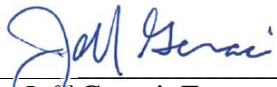
1 section 2699(i) with 75% of recovery to the LWDA and 25% of the recovery to the aggrieved
2 employees, according to proof and subject to approval by the Court;

3 W. For reasonable attorneys' fees and costs pursuant to statute, including Labor
4 Code sections 226, 1194, 2802, and 2698, *et seq.*, and Code of Civil Procedure section 1021.5;

5 X. For such other relief the Court deems just and proper.

6 **COHELAN KHOURY & SINGER**
7 **FERRARO EMPLOYMENT LAW, INC.**

8 Dated: August 24, 2020

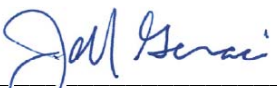
9 By: 
10 Jeff Geraci, Esq.
11 Attorneys for Plaintiff Armando Jimenez,
12 individually and on behalf of others similarly
13 situated

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff demands a jury trial of all claims triable as of right by jury.

16 **COHELAN KHOURY & SINGER**
17 **FERRARO EMPLOYMENT LAW, INC.**

18 Dated: August 24, 2020

19 By: 
20 Jeff Geraci, Esq.
21 Attorneys for Plaintiff Armando Jimenez,
22 individually and on behalf of others similarly
23 situated