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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

GABRIEL LAFARGA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

G.I. TRUCKING COMPANY D/B/A ESTES
WEST; a corporation; and DOES 1 through 50,
inclusive,

Defendants.

CLASS ACTION 37-2022-00028993-CU-OE-CTL

CLASS ACTION COMPLAINT

1. Failure to Pay All Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Underpaid Paid Sick Leave Wages & Supplemental Paid Sick Leave Wages
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Unfair Competition

1 Plaintiff GABRIEL LAFARGA (“Plaintiff”), as an individual and on behalf of all others
2 similarly situated, brings this CLASS ACTION COMPLAINT against Defendants G.I. TRUCKING
3 COMPANY D/B/A ESTES WEST, a corporation; and DOES 1 through 50 (collectively,
4 “Defendants”), and on information and belief alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action brought under California Code of Civil Procedure § 382 for
7 Defendants’ violations of the California Labor Code and Business and Professions Code.

8 2. Defendants’ employment policies and practices and payroll administration systems
9 enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

10 **JURISDICTION & VENUE**

11 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
12 California Constitution.

13 4. Venue as to each defendant is proper in this judicial district under Code of Civil
14 Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, employed
15 Plaintiff in this county, and committed some of the alleged violations in this county.

16 **PARTIES**

17 **A. Plaintiff Gabriel LaFarga**

18 5. Plaintiff GABRIEL LAFARGA is an individual over 18 years of age who worked for
19 Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until APRIL 2022.

20 **B. Class Members**

21 6. Plaintiff brings this action as an individual and on behalf of the following class under
22 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
23 State of California as hourly non-exempt employees at any time from four years preceding the filing
24 of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

25 7. Further, Plaintiff proposes the following subclasses:

- 26 a. Underpaid Overtime Subclass: All Class Members who were paid overtime
27 wages in the same pay period in which they were also paid non-excludable
28

1 forms of remuneration (including, but not limited, to bonuses and
2 remuneration marked as “Bonus Claims” on employee wage statements).

3 b. Meal Period Subclass: All Class Members [1] who worked shifts of five
4 hours or more without a duty-free meal period of at least 30 minutes or
5 worked shifts of 10 or more hours without a second duty-free meal period of
6 at least 30 minutes, who were not paid one hour of pay at the regular rate of
7 compensation for each of those days, or [2] who were paid for a rest period at
8 a rate less than what is required under Labor Code section 226.2.

9 c. Rest Period Subclass: All Class Members [1] who worked shifts of four
10 hours or major fraction thereof without being authorized or permitted an
11 uninterrupted rest period of at least 10 minutes and who were not paid one
12 hour at the regular rate of compensation for each of those days, or [2] who
13 were paid for a rest period at a rate less than what is required under Labor
14 Code section 226.2.

15 d. Paid Sick Leave Subclass: All Class Members who were paid paid sick leave
16 wages in the same pay period in which they were also paid additional forms
17 of non-excludable remuneration (including, but not limited, to bonuses and
18 remuneration marked as “Bonus Claims” on employee wage statements).

19 e. Untimely Payment of Wages Subclass: All individuals who are members of
20 the following classes: (i) Underpaid Overtime Subclass, (ii) Meal Period
21 Subclass, (iii) Rest Period Subclass, and (iv) Paid Sick Leave Subclass.

22 f. Wage Statement Subclass: All individuals who: [1] are/were members of the
23 following classes: (i) Underpaid Overtime Subclass, (ii) Meal Period
24 Subclass, (iii) Rest Period Subclass, and (iv) Paid Sick Leave Subclass, and
25 [2] who received a wage statement from Defendants at any time during the
26 one-year period preceding the filing of this action through the present.

27 g. Waiting Time Penalty Subclass: All individuals who are/were members of
28 the following classes: (i) Underpaid Overtime Subclass, (ii) Meal Period

1 Subclass, (iii) Rest Period Subclass, and (iv) Paid Sick Leave Subclass, at
2 any time during the three-year period preceding the filing of this action
3 through the present, excluding current employees who have never previously
4 separated from employment with Defendants.

5 **C. Defendants**

6 8. Plaintiff is informed, believes, and alleges that Defendants G.I. TRUCKING
7 COMPANY D/B/A ESTES WEST does business in the State of California and employs labor
8 throughout the State of California.

9 9. The true names and capacities, whether individual, corporate, or otherwise, of the
10 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
11 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
12 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
13 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
14 capacities when they become known.

15 10. Plaintiff is informed, believes, and alleges that all defendants in this action are
16 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
17 defendant exercises control over the wages, hours, and working conditions of Plaintiff and the other
18 aggrieved employees, suffers and permits them to work, and/or otherwise engages the workforce
19 creating a common law employment relationship.

20 11. Plaintiff is informed, believes, and alleges that at least some of the defendants have
21 common ownership, common management, interrelationship of operations, and centralized control
22 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
23 responsible for the acts and omissions alleged herein.

24 12. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
25 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
26 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
27 such that the acts and omissions of each defendant may be legally attributable to all others.

1 13. Plaintiff is informed, believes and alleges that the above-mentioned defendants
2 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
3 minimum wages and days of work and other provisions of the Labor Code with respect to the Class
4 of aggrieved employees. As a result, they may be held personally liable under Labor Code sections
5 558, 558.1, and 1197.1. *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

6 **GENERAL ALLEGATIONS**

7 14. Plaintiff worked for Defendants in the positions of Cargo Handler Platform, Driver
8 Trainee, and Driver from October 2014 to April 2022. Throughout his employment, Plaintiff was a
9 non-exempt employee who was paid hourly wages, as well as bonuses labeled "Bonus Claim" and
10 other forms of remuneration.

11 15. When Defendants paid overtime to Plaintiff and other Class Members, Defendants
12 failed to pay the overtime at the lawful regular rate of pay. Plaintiff and other Class Members
13 regularly worked overtime hours and earned bonuses and other forms of remuneration during the
14 same pay period. In those pay periods, Defendants paid employees at their straight time hourly rate
15 for the overtime hours, failing to pay overtime hours "at the rate of no less than one and one-half
16 times the regular rate of pay for an employee[.]" or "at the rate of no less than twice the regular
17 rate of pay for an employee" for any applicable double time hours, as required by Labor Code
18 section 510 and the IWC Wage Orders. Accordingly, Defendants are liable for the underpaid
19 overtime wages, civil and statutory penalties, interest, and waiting time penalties for each affected
20 Class Member.

21 16. An illustrative example of the regular rate of pay violation is found on Plaintiff's pay
22 statement for the pay period from 02/27/2022 through 03/11/2022. During this pay period,
23 Plaintiff earned a production/efficiency bonus, but such amount was not factored into his overtime
24 rate, as he was instead paid at a rate of 1.5x the base rate rather than 1.5x the regular rate of pay.
25 Defendants committed this same "regular rate of pay" violation against the Class Members as
26 well, when employees earned forms of pay like bonuses and commissions required to be included
27 in the regular rate but were not, as a matter of payroll administration and company policy. This
28 resulted in significant underpayments of wages to employees.

1 17. On information and belief, Defendants failed to consistently provide timely, off-duty
2 30-minute meal periods to Class Members within the first five hours of work, and timely second
3 off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation
4 of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*See, e.g.,*
5 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the terms are
6 synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay”
7 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.”])
8 “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period
9 violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11
10 Cal. 5th 58.

11 18. When Defendants did not provide fully compliant meal periods, Defendants failed to
12 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
13 violation of Labor Code section 226.7. *Ferra*, 11 Cal. 5th at 863. Defendants’ practice of not
14 paying all meal period premiums at the lawful rate (*i.e.*, including all forms of remuneration in the
15 “regular rate of compensation”) is a matter of common corporate policy and payroll administration
16 such that it applies and affected all other Class Members.

17 19. Moreover, due to Defendants’ business practices and employees’ job
18 responsibilities, Defendants failed to authorize or *permit* ten-minute rest periods for every four
19 hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and
20 section 12 of the applicable IWC Wage Order. When Defendants did not provide a fully compliant
21 rest period to Plaintiff or other Class Members, Defendants failed to pay Plaintiff and other Class
22 Members a rest period premium at the lawful “regular rate of compensation” in violation of Labor
23 Code section 226.7.

24 20. In pay periods where Defendants provided Plaintiff and other Class Members with
25 remuneration in addition to their respective base hourly rate for hours worked (*e.g.*, bonus claim
26 payments—excluding any forms of pay subject to any applicable statutory exclusions from the
27 “regular rate”—Defendants failed to properly calculate and pay paid sick leave at rate of pay
28 required by Labor Code § 246. Defendants paid such sick leave at employees’ base hourly rate

1 instead of one of the methods authorized by statute, which required Defendants to factor in
2 employees' additional remuneration into the sick leave wage rate.

3 21. Defendants' underpayment of sick leave resulted in wage underpayments to Plaintiff
4 and Class Members.

5 22. Because Defendants did not pay Plaintiff and the Class Members all wages,
6 premiums, and paid sick leave owed each pay period of their employment, Defendants failed to
7 timely pay Plaintiff and Class Members all wages owed each pay day or upon separation of
8 employment (or within 72 hours thereof), in violation of Labor Code sections 201 through 203
9 (waiting time) and 204 and 204b (paydays).

10 23. Defendants equally failed in their affirmative obligation to provide accurate itemized
11 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage statements
12 to Plaintiff and, on information and belief, other Class Members, which contain at least two distinct
13 types of violations.

14 24. First, on each wage statement furnished, Defendants failed to accurately state the
15 "gross wages earned" and "net wages earned" in violation of Labor Code sections 226(a)(1), (5) by
16 not listing the correct "gross wages earned" or "net wages earned," as the employees earned
17 overtime, premiums, and sick pay at one and one-half times their regular rate of pay/compensation,
18 but were underpaid an hourly basis (due to the regular rate of pay underpayment), resulting in an
19 inaccurate reflection and recording of "gross/net wages earned" on those wage statements.

20 25. Second, on each wage statement furnished, Defendants failed to accurately state "all
21 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
22 each hourly rate by the employee" in violation of Labor Code § 226(a)(9), as the wage statements
23 issued to Plaintiff and Class Members do not accurately list the lawful applicable hourly overtime
24 rates, meal and rest period premiums, or paid sick leave rates in effect, but instead deflated rates that
25 do not include all forms of non-expected remuneration in the regular rate required to calculate and
26 pay overtime, meal and rest period premiums, and paid sick leave rates. The hourly rates are
27 incorrect due to the regular rate violations. Additionally, failure to list the meal and rest period
28 premiums owed but not paid further violates Labor Code § 226 (a)(9).

1 26. Defendants' wage statement issues described above rendered the wage statements
2 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
3 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
4 Members as the sole documentary evidence of their respective earnings.

5 27. Plaintiff and Class Members suffered injury in the form of confusion regarding
6 amounts paid for hours worked, and in the form of concealment of the common payroll practices
7 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
8 this Complaint.

9 28. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
10 and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies
11 on the wage statements, Plaintiff and, on information and belief, Class Members were led to believe
12 that the hourly rates and net and gross wages reflected were a complete and accurate reflection of the
13 wages actually earned under California law.

14 29. Defendants' wage statement violations were knowing and intentional as a matter of
15 law with respect to Plaintiff and California Class Members given that the legal obligation was not
16 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
17 Defendants nevertheless failed to comply despite the means and ability to do so.

18 30. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
19 knowingly and intentionally caused harm to Plaintiff and the Class Members.

20 31. Plaintiff is informed, believes, and alleges that Defendants have engaged in systemic
21 violations of the Labor Code and IWC Wage Orders by maintaining practices, policies, and customs
22 that are inconsistent with their obligations under California law.

23 **CLASS ALLEGATIONS**

24 32. *Numerosity.* The members of the Class are so numerous that joinder of all
25 individuals would be impracticable. The identity of the Class Members is readily ascertainable by
26 inspection of employment and payroll records Defendants maintain and are required to maintain by
27 under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff is informed, believes,
28 and alleges there are more than 100 Class Members.

1 33. *Adequacy of Representation.* Plaintiff is an adequate class representative. Plaintiff
2 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
3 Plaintiff is represented by attorneys who have substantial experience prosecuting, defending,
4 resolving and litigating wage and hour class actions in California state and federal courts.

5 34. *Superiority.* A class action is superior to other means for adjudication of the claims
6 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
7 for the common issues to be resolved in a single forum, simultaneously and without duplication of
8 effort and expense.

9 35. *Commonality.* Common questions of law and fact and a community of interest exists
10 amongst Plaintiff and the Class. These common issues arise from the employment relationship with
11 Defendants and predominate over any individual issues.

12 36. *Typicality.* Plaintiff's claims are typical of the claims of the other Class Members.
13 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
14 resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices,
15 which Plaintiff experienced and is representative of, will establish the right of the Class to recover
16 on the causes of action alleged herein.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY ALL OVERTIME WAGES**

19 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

20 37. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

21 38. Plaintiff brings this cause of action on behalf of the Underpaid Overtime Subclass.

22 39. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
23 no less than one and one-half times their respective "regular rate of pay" for all hours worked in
24 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
25 seventh day of work in any one workweek, and no less than twice their respective "regular rate of
26 pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
27 day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the IWC Wage
28 Orders (the "Hours and Days of Work" sections of the applicable orders).

1 40. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
2 overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover
3 to the full amount of the unpaid overtime wages, in addition to interest, attorneys' fees, and costs
4 to the extent permitted by law, including under Labor Code section 1194.

5 **SECOND CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 41. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

8 42. Plaintiff brings this cause of action on behalf of the Meal Period Subclass.

9 43. Defendants willfully failed in their affirmative obligation to consistently provide
10 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes
11 beginning before the fifth hour of hour for each work period of more than five hours per day and a
12 second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour
13 of work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the "Meal
14 Periods" sections of the applicable orders).

15 44. Further, Defendants willfully failed in their affirmative obligation to consistently
16 pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of
17 compensation for each workday that a fully compliant meal period was not provided, in violation
18 of Labor Code sections 226.7, 512, and 1198 and the IWC Wage Orders (the "Meal Periods"
19 sections of the applicable orders).

20 45. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of meal
21 periods and meal period premiums in amounts to be determined at trial. Plaintiff and the Class are
22 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys'
23 fees, and costs to the extent permitted by law, including under Code of Civil Procedure section
24 1021.5.

25 **THIRD CAUSE OF ACTION**

26 **REST PERIOD VIOLATIONS**

27 46. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

28 47. Plaintiff brings this cause of action on behalf of the Rest Period Subclass.

1 48. Defendants willfully failed in their affirmative obligation to consistently authorize
2 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less
3 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
4 Code sections 226.7, 516, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
5 applicable orders).

6 49. Further, Defendants willfully failed in their affirmative obligation to consistently
7 pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of
8 compensation for each workday that a fully compliant rest period was not provided, in violation of
9 Labor Code sections 226.7 and 1198 and the IWC Wage Orders.

10 50. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of rest
11 periods and rest period premiums in amounts to be determined at trial. Plaintiff and the Class are
12 entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’
13 fees, and costs to the extent permitted by law, including under Code of Civil Procedure section
14 1021.5.

15 **FOURTH CAUSE OF ACTION**

16 **UNDERPAID PAID SICK LEAVE WAGES &**
17 **SUPPLEMENTAL PAID SICK LEAVE WAGES**

18 51. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

19 52. Plaintiff brings this cause of action on behalf of the Paid Sick Leave Subclass.

20 53. Defendants knowingly and intentionally failed in their affirmative obligation provide
21 and pay paid sick leave and Covid-19 Supplemental Sick Leave at the regular rate of pay to
22 Plaintiff and Class Members in violation of Labor Code section 246.

23 54. Labor Code section 246(b)(1) requires that employees accrue sick leave at the
24 commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c)
25 entitles employees to use any accrued sick leave beginning on their 90th day of employment.
26 Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

27 [A]n employer shall calculate paid sick leave using any of the following calculations:
28

1 (1) Paid sick time for nonexempt employees shall be calculated in the same
2 manner as the regular rate of pay for the workweek in which the employee
3 uses paid sick time, whether or not the employee actually works overtime in
4 that workweek.

5 (2) Paid sick time for nonexempt employees shall be calculated by dividing
6 the employee's total wages, not including overtime premium pay, by the
7 employee's total hours worked in the full pay periods of the prior 90 days of
8 employment.

9 (3) Paid sick time for exempt employees shall be calculated in the same
10 manner as the employer calculates wages for other forms of paid leave time.

11 51. Defendants failed to pay Plaintiff and Class Members paid sick leave at one of the
12 lawful rates set forth in the statute because Defendants failed to include in their calculation the
13 commissions and additional remuneration received by Plaintiff and the Class Members.

14 52. Furthermore, Defendants knowingly and intentionally failed in their affirmative
15 obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation
16 of Labor Code sections 246, 247.5, 248.2, and 248.6.

17 53. Labor Code 248.2 requires employers to provide up to 80 hours of Covid-19
18 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021.
19 Labor Code section 248.6 extended Covid sick leave protections and requires employers to
20 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1,
21 2022 to September 30, 2022, and may be extended thereafter.

22 54. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19
23 supplemental paid sick leave according to the highest of the following four methods: (1) the
24 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
25 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3)
26 the state minimum wage, or (4) the local minimum wage.

1 55. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick
2 leave under either one of the following methods: (1) regular rate of pay or (2) the employee's total
3 wages in a 90-day period divided by total hours worked.

4 56. Defendants failed to provide and pay Covid-19 supplemental paid sick leave in the
5 manner described above because Defendants failed to pay Plaintiff and the Class Members such
6 sick leave at one of the rates authorized by statute. Specifically, Defendants failed to include in
7 their calculation the commissions and additional remuneration received by Plaintiff and the Class
8 Members.

9 57. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the
10 Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

11 **FIFTH CAUSE OF ACTION**

12 **UNTIMELY PAYMENT OF WAGES**

13 58. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

14 59. This cause of action is brought by the Untimely Payment of Wages Subclass
15 pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-
16 exempt employees be timely paid all wages owed each pay period, and which further provide a
17 private right of action for an employer's failure to comply with this obligation.

18 60. Defendants willfully failed in their affirmative obligation to timely pay all wages,
19 including overtime wages, paid sick leave, and meal and rest premiums, earned by Plaintiff and
20 Class Members twice during each calendar month on days designated in advance by the employer
21 as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled
22 weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and
23 the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

24 61. Plaintiff and the Class are entitled to recover the full amount of the unpaid wages, in
25 addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
26 each employee and \$200 for all subsequent violations and for all willful or intentional violations
27 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under
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1 provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent
2 permitted by law.

3 **SIXTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 62. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

6 63. This cause of action is brought by the Wage Statement Subclass pursuant to Labor
7 Code §§ 226(a) which requires non-exempt employees be provided accurate itemized wage
8 statements each pay period, and which further provide a private right of action for an employer's
9 failure to comply with this obligation.

10 64. Defendants knowingly and intentionally failed in their affirmative obligation provide
11 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff
12 and Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did
13 not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

14 65. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
15 itemized wage statements, causing confusion and concealing wage and premium underpayments.

16 66. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50
17 per employee for the initial pay period in which a violation occurred and \$100 per employee for
18 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
19 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under
20 Labor Code section 226(e).

21 **SEVENTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 67. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 68. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to
25 Labor Code §§ 201 through 203, which require an employer to timely pay all wages (including
26 sick leave wages) earned upon termination of employment, and which further provide a private
27 right of action to recover statutory waiting time penalties each day an employer fails to comply
28 with this obligation, up to a maximum of 30 days wages.

1 69. Defendants willfully failed and continue to fail in their affirmative obligation to pay
2 all wages earned and unpaid to Plaintiff and members of the Waiting Time Penalty Subclass
3 immediately upon termination of employment or within 72 hours thereafter for employees who did
4 not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay
5 those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the
6 IWC Wage Orders.

7 70. Plaintiff and the Waiting Time Penalty Subclass are entitled to recover to a waiting
8 time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the
9 extent permitted by law.

10 **EIGHTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 71. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

13 72. Plaintiff brings this cause of action on behalf of all Classes.

14 73. Defendants have engaged and continue to engage in unfair and/or unlawful business
15 practices in the State of California in violation of California Business and Professions Code
16 § 17200 by failing committing the foregoing wage and hour violations alleged throughout this
17 Complaint.

18 74. Defendants' dependance on these unfair and/or unlawful business practices deprived
19 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
20 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
21 Defendants over competitors who have been and/or are currently employing workers in
22 compliance with California's wage and hour laws. These failures constitute unlawful, deceptive,
23 and unfair business acts and practices in violation of Business and Professions Code section
24 17200, *et seq.*

25 75. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
26 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
27 restitution of the moneys as necessary and according to proof to restore all monies withheld,
28

1 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
2 and 17208.

3 76. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
4 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership
5 interest and to prevent future damage and the public interest under Business and Professions Code
6 § 17200, *et seq.* Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
7 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

8 **PRAYER**

9 Plaintiff prays for judgment as follows:

- 10 a. For certification of this action as a class action;
- 11 b. For appointment of Plaintiff as the representative of the Class;
- 12 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 13 d. For recovery of damages in amount according to proof;
- 14 e. For all recoverable pre- and post-judgment interest;
- 15 f. For disgorgement of all amounts wrongfully obtained;
- 16 g. For restitution and injunctive relief;
- 17 h. For reasonable attorneys' fees and costs of suit, including expert fees, to the
18 extent permitted by law, including (without limitation) under Labor Code
19 §§ 218.5, 226, 1194, and Code of Civil Procedure section 1021.5; and
- 20 i. For such other relief the Court deems just and proper.

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22 Dated: July 22, 2022

Ferraro Vega Employment Lawyers, Inc.

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25 Nicholas J. Ferraro
26 *Attorneys for Plaintiff*
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